

No. 12368

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United States  
Court of Appeals  
For the Ninth Circuit.

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CLARK SQUIRE, United States Inspector of Internal Revenue for the State of Washington,  
Appellant,

vs.

PUGET SOUND PULP & TIMBER CO.,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Western District of Washington,  
Northern Division.

JAN 4 1950

PAUL P. O'BRIEN,  
CLERK



No. 12368

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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF COUNSEL

J. CHARLES DENNIS,  
United States Attorney,  
1017 U. S. Court House,  
Seattle 4, Washington,  
Attorney for Appellant.

THOMAS R. WINTER,  
Special Assistant to the Chief Counsel,  
Bureau of Internal Revenue,  
713 Smith Tower,  
Seattle 4, Washington,  
Attorney for Appellant.

ROBERT H. EVANS OF  
EVANS, McLAREN, LANE,  
POWELL & BEEKS,  
1111 Dexter Horton Building,  
Seattle 4, Washington,  
Attorneys for Appellee.

In the District Court of the United States in and  
for the Western District of Washington

No. 951

PUGET SOUND PULP & TIMBER CO.,  
Plaintiff.

vs.

CLARK SQUIRE, United States Collector of In-  
ternal Revenue for the State of Washington,  
Defendant.

### COMPLAINT

For the Recovery of Interest Erroneously and  
Illegally Assessed and Collected

Comes now the plaintiff, complains of the de-  
fendant and for cause of action alleges:

#### I.

This action arises under the Internal Revenue Laws of the United States and is brought pursuant to the provisions of Section 24 of the Judicial Code, U. S. C. Title 28, Section 41(5) for the recovery of interest erroneously and illegally assessed against and collected from plaintiff as hereinafter more fully appears.

#### II.

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Delaware. Its principal place of business is in the City of Bellingham, State of Washington and in the Western District of Washington.

## III.

Defendant now is and at all times since the 6th day of March, 1941, has been, the duly appointed, qualified and acting United States Collector of Internal Revenue in the State of Washington and is a resident of the Western District of Washington. Defendant is the person to whom the interest herein sought to be recovered was paid.

## IV.

On or about the 15th day of May, 1943, plaintiff duly filed its corporation excess profits tax return with defendant as Collector of Internal Revenue. Said return disclosed adjusted excess profits net income for the year 1942 (computed without reference to Section 722 of the Internal Revenue Code) in the amount of \$2,584,101.85. Plaintiff's normal tax net income for the year 1942 computed without the credit provided in Section 26(e) of the Internal Revenue Code, as reported on said return was \$2,553,133.02. On its excess profits tax return for the year 1942, plaintiff claimed the benefits of Section 722 of the Internal Revenue Code in accordance with the regulations prescribed by the Commissioner of Internal Revenue with the approval of Secretary of the Treasury. The reduction in excess profits tax for the year 1942 claimed by plaintiff under Section 722 of the Internal Revenue Code was \$409,707.16.

## V.

As plaintiff's adjusted excess profits net income for the year 1942 (computed without reference to

Section 722 of the Internal Revenue Code) exceeded 50 per centum of plaintiff's normal tax net income for said year, computed without the credit provided in Section 26(e) of the Internal Revenue Code and plaintiff claimed the benefits of Section 722 of the Internal Revenue Code in its excess profits tax return for the year 1942, under the provisions of Section 710(a)(5) of the Internal Revenue Code, plaintiff was entitled to reduce the amount of excess profits tax payable at the time prescribed for payment by an amount equal to 33 per centum of the said sum of \$409,707.16. Plaintiff elected to reduce the amount of excess profits tax computed without the benefit of Section 710(a)(5) of the Internal Revenue Code by the amount of \$135,203.36 as provided in Section 710(a)(5) of the Internal Revenue Code.

## VI.

During the year 1942, plaintiff retired indebtedness in the amount of \$375,000. Under the provisions of Section 783 of the Internal Revenue Code, plaintiff was entitled to a credit against its excess profits tax for the year 1942 in the amount of 40 per centum of the indebtedness retired or to wit, \$150,000. In its excess profits tax return for the year 1942, plaintiff elected to take the credit allowed by Section 783 of the Internal Revenue Code for the retirement of indebtedness and took said credit in the amount of \$150,000. After the deduction of said sum of \$135,203.36 pursuant to the provisions of Section 710(a)(5) of the Internal

Revenue Code and the deduction of said credit in the amount of \$150,000 for the retirement of indebtedness the excess profits tax disclosed by the return and payable at the time prescribed for payment was \$1,410,924.79.

#### VII.

Said excess profits tax liability for the year 1942 in the amount of \$1,410,924.79 was duly paid by plaintiff to defendant as Collector of Internal Revenue in installments during the year 1943 at the times and in the manner provided by law.

#### VIII.

Plaintiff's profits for the year 1942 were renegotiated and as the result thereof, plaintiff's excess profits tax for the year 1942 was reduced by the amount \$119,492.48 so that plaintiff's excess profits tax liability for the year 1942 computed upon the income reported in its return for said year adjusted for renegotiation was \$1,291,432.31.

#### IX.

Thereafter on August 29, 1944, the Commissioner of Internal Revenue determined that plaintiff was not entitled to relief under the provisions of Section 722 of the Internal Revenue Code, rejected plaintiff's claim for relief under said Section 722 for the year 1942 and assessed against plaintiff for the year 1942, additional excess profits taxes which included the sum of \$135,203.36, the amount by which

said tax had been reduced in accordance with Section 710 (a)(5) of the Internal Revenue Code.

### X.

Thereafter, pursuant to the assessment of said additional tax, defendant as Collector of Internal Revenue demanded that plaintiff pay said additional tax and further demanded that plaintiff pay interest thereon at the rate of 6 per centum per annum from March 15, 1943 to the date of payment thereof. On October 13, 1944, plaintiff paid to defendant pursuant to his demand the sum of \$194,596.26 in payment of said taxes and interest thereon. Said sum included interest on said \$135,203.36 in the amount of \$405.80 for the period from August 29, 1944 to October 13, 1944. Thereafter defendant made a further demand for interest on said \$135,203.36 at the rate of 6 per centum per annum from March 15, 1943. On November 30, 1944, pursuant to said demand of defendant, plaintiff paid additional interest on said sum of \$135,203.36 for the period from March 15, 1943 to November 30, 1944 in the amount of \$11,880.12. Said payment was made under written protest. A true and correct copy of said protest is attached hereto marked Exhibit A and is hereby referred to and by this reference made a part hereof the same as though fully set forth herein.

### XI.

Said interest in the amount of \$11,880.12 collected from plaintiff as aforesaid was assessed and



collected for the period from March 15, 1943 to November 29, 1944 on the sum of \$135,203.36, payment of which was deferred in accordance with and under authority of the provision of Section 710(a)(5) of the Internal Revenue Code. Under the provisions of said Section 710(a)(5) of the Internal Revenue Code said \$135,203.36 was not payable on March 15, 1943 and did not become payable until plaintiff's claim for relief under Section 722 of the Internal Revenue Code was rejected and payment of said deferred portion of the tax was demanded. Said sum of \$135,203.36 did not become payable prior to August 29, 1944 and no payment of said sum was demanded of plaintiff until after August 29, 1944. Under the provisions of Section 292 of the Internal Revenue Code interest was payable on said sum of \$135,203.36 only from and after the date prescribed for payment thereof. There is no provision in the law which prescribes a specific date or dates for the payments of such sums and the date prescribed for payment within the meaning of Section 292 of the Internal Revenue Code could not precede the date said sum became payable as the result of the rejection of the claim for relief under Section 722 of the Internal Revenue Code and the demand for payment of said deferred portion of the tax.

## XII.

The assessment and collection of interest upon said sum of \$135,203.36 for any period prior to August 29, 1944 was erroneous and illegal and was

contrary to and in direct violation of the laws of the United States and particularly, the provisions of Sections 710(a)(5) and 292 of the Internal Revenue Code.

### XIII.

On November 30, 1944, plaintiff duly filed its claim for refund of said interest in the amount of \$11,880.12 erroneously and illegally assessed and collected as aforesaid. Said claim for refund was made and filed with defendant as Collector of Internal Revenue in accordance with the provisions of the law and the regulations established in pursuance thereof, and alleged therein the same facts and grounds hereinbefore alleged and herein relied upon. A true and correct copy of said claim is attached hereto marked Exhibit B and is hereby referred to and by this reference made a part hereof the same as though fully set forth herein. On March 21, 1945, the Commissioner of Internal Revenue rejected said claim. A true and correct copy of the rejection letter received by plaintiff from the Commissioner of Internal Revenue is attached hereto marked Exhibit C and hereby made a part hereof.

### XIV.

No part of said interest in the amount of \$11,880.12 has never been repaid or refunded to plaintiff and the whole thereof is now due and owing from defendant to plaintiff.

Wherefore, plaintiff prays that it have and recover from defendant the sum of \$11,880.12 to-



gether with interest thereon from the date of payment thereof as provided by law, that it recover the costs of suit herein, and that the Court grant such other and further relief as may be proper in the premises.

/s/ GEORGE H. KOSTER,

/s/ BAYLEY KOHLMEIER,

/s/ ROBERT H. EVANS,

Attorneys for Plaintiff.

State of Washington,  
County of Whatcom—ss.

L. Turcotte, being first duly sworn, deposes and says:

That he is an officer, to wit, Exec. Vice President of Puget Sound Pulp & Timber Co., plaintiff herein; that he has read the foregoing complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

/s/ L. TURCOTTE.

Subscribed and sworn to before me this 16th day of October, 1946.

[Seal]      /s/ J. C. MCGREGOR,  
Notary Public.

## EXHIBIT A

Puget Sound Pulp & Timber Co.  
Bellingham, Washington U. S. A.

November 29, 1944.

Protest of Puget Sound Pulp & Timber Co. Against  
Payment of Interest on Excess Profits Tax  
Collector of Internal Revenue  
District of Washington  
Tacoma, Washington

Dear Sir:

Pursuant to your demand, Puget sound Pulp & Timber Co. hereby tenders its check dated November 29, 1944 drawn on Seattle-First National Bank, Bellingham, in the amount of \$11,880.12, in payment of additional interest demanded by you upon the additional excess profits taxes assessed against Puget Sound Pulp & Timber Co. for the year 1942. This payment is made under protest and duress and as the result of your demands and threats to enforce collection thereof against the property of this company. The protest is based upon the following grounds:

1. Said sum of \$11,880.12 represents interest at the rate of six percent per annum for the period March 15, 1943 to November 30, 1944 on \$135,203.36, the portion of this company's excess profits tax for the year 1942, payment of which was deferred in accordance with and pursuant to Section 710(a)(5) of the Internal Revenue Code.

2. Under the provision of Section 710(a)(5) of the Internal Revenue Code said \$135,203.36 did not become payable until demanded or until this company's claim for relief under Section 722 of the Internal Revenue Code was acted upon by the Commissioner of Internal Revenue. Said claim for relief was acted upon by the Commissioner on August 29, 1944.

3. Under the provisions of Section 292 of the Internal Revenue Code, interest is payable on said \$135,203.36 only from the date said tax was payable. Said \$135,203.36 was not payable prior to August 29, 1944.

4. The interest paid herewith in the amount of \$11,880.12 has been erroneously and illegally assessed and demanded and is not due or payable.

Respectfully submitted,

PUGET SOUND PULP &  
TIMBER CO.

L. TURCOTTE,

Executive Vice President.

## EXHIBIT B

Form 843 Treasury Department

## Claim

To Be Filed With the Collector Where Assessment  
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☐ Refund or Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

State of Washington,  
County of Whatcom—ss:

Name of taxpayer or purchaser of stamps Puget  
Sound Pulp & Timber Co.

Business address Bellingham, Washington.

Residence .....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed  
Washington.

2. Period (if for income tax, make separate form for each taxable year) from ....., 19.., to ....., 19...

3. Character of assessment or tax Interest on excess profits tax for year 1942.

4. Amount of assessment, \$11,880.12; dates of payment .....

5. Date stamps were purchased from the Government .....

6. Amount to be refunded \$11,880.12.

7. Amount to be abated (not applicable to income, gift, or estate taxes) \$. .....

8. The time within which this claim may be legally filed expires, under section ..... of ..... (Revenue Act or Internal Revenue Code) on ....., 19 ...

The deponent verily believes that this claim should be allowed for the following reasons:

*Puget Sound Pulp & Timber Co.*

The interest in the amount of \$11,880.12, refund of which is hereby claimed, is interest at the rate of 6% per annum from the period from March 15, 1943 to November 30, 1944 on the sum of \$135,203.36. Said \$135,203.36 is the portion of claimant's excess profits tax for the year 1942, the payment of which claimant elected to defer in accordance with and pursuant to the provision of Section 710(a) (5) of the Internal Revenue Code. The claim

for relief under section 722 of the Internal Revenue Code (Form 991) was attached to claimant's excess profits tax return for the year 1942 and was denied by the Commissioner on August 29, 1944.

Under the provisions of section 710(a)(5) of the Internal Revenue Code said \$135,203.36 was not payable until demanded or at least until the aforesaid claim for relief was acted upon by the Commissioner and under the provisions of Section 292 of the Internal Revenue Code interest on any portion thereof determined to be due was payable only from the date prescribed for the payment thereof, namely, the date payment was demanded or the date the claim for relief was acted upon.

On or about October 13, 1944 claimant paid the sum of \$194,596.26 as additional excess profits tax and interest thereon for the year 1942. \$135,609.16 of said sum represented the aforesaid \$135,203.36 with interest thereon from August 29, 1944 in the amount of \$405.80. Thereafter on November 29, 1944 claimant paid additional interest on said \$135,203.36 for the period from March 15, 1943 to November 30, 1944 in the amount of \$11,880.12. Said additional interest was paid pursuant to demand of the Collector of Internal Revenue and was paid under written protest. Said \$11,880.12 was not due or payable and was erroneously, illegally assessed and collected and should be refunded.



EXHIBIT C

Treasury Department  
Washington

March 21, 1945.

Office of  
Commissioner of  
Internal Revenue

IT:C1:CC-6:CES

Puget Sound Pulp & Timber Company  
Bellingham, Washington

Gentlemen:

Reference is made to your claim for refund of interest on Form 843 in the amount of \$11,880.12, filed November 30, 1944, for the taxable year ended December 31, 1942.

In your claim you state that this amount represents interest computed at 6% per annum from March 15, 1943 to November 30, 1944, on \$135,-203.36 additional excess profits tax resulting from the disallowance of a deferment under section 710(a)(5) of the Internal Revenue Code.

You claim that interest should have been computed from August 29, 1944, the date of disallowance of your application for relief under Section 722 of the Internal Revenue Code, rather than from the due date of the return, March 15, 1943.

Since that portion of the additional tax, \$135,-203.36, resulting from the disallowance of the relief requested under section 722 represented tax which was deferred under section 710(a)(5) on the re-

turn, such tax represents a deficiency as set forth in section 271 of the Internal Revenue Code and as a deficiency under such section of the Code is subject to the interest provisions of section 292(2) of the Code. There is no provision in the Internal Revenue Code which provides that interest shall be computed from the date of disallowance of the claim under section 722 where a deferment is involved under section 710(a)(5) of the Internal Revenue Code.

Therefore, it is held by this office that interest was correctly computed from the due date of the return and your claim for refund is not allowable. In accordance with the provisions of section 3772(a)(2) of the Internal Revenue Code, this notice of disallowance in full of your claim is hereby given by registered mail.

By direction of the Commissioner:

Yours very truly,

NORMAN D. CANN,  
Deputy Commissioner.

[Endorsed]: Filed Oct. 18, 1946.



District Court of the United States for the Western  
District of Washington, Southern Division

Civil Action File No. 951

PUGET SOUND PULP & TIMBER CO.,  
Plaintiff,

vs.

CLARK SQUIRE, United States Collector of In-  
ternal Revenue for State of Washington,  
Defendant.

### SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon George E. Koster, Bayley Kohlmeier and Robert H. Evans, plaintiff's attorneys, whose address is 1111 Dexter Horton Building, Seattle, Washington an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: October 18, 1946.

MILLARD P. THOMAS,  
Clerk of Court.

[Seal] By E. E. REDMAYNE,  
Deputy Clerk.

Return on Service of Writ attached.

Return Receipt by Registered Mail attached.

[Endorsed]: Filed Oct. 25, 1946.

[Title of District Court and Cause.]

### STIPULATION

It is hereby stipulated by and between the plaintiff, by its attorneys, George H. Koster, Bayley Kohlmeier and Robert H. Evans, and defendant, by his attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, Harry Sager, Assistant United States Attorney, and Thomas R. Winter, Special Assistant to the Chief Counsel, Bureau of Internal Revenue, that subject to the discretion of the Court defendant may have to and including the 15th day of February, 1947, in which to answer or otherwise plead in the above-entitled cause.

Dated this 12th day of December, 1946.

/s/ GEO. H. KOSTER,

/s/ BAYLEY KOHLMEIER,

/s/ ROBERT H. EVANS,

Attorneys for Plaintiff.

J. CHARLES DENNIS,

United States Attorney.

HARRY SAGER,

Assistant United States  
Attorney.

THOMAS R. WINTER,

Special Assistant to the Chief Counsel, Bureau of  
Internal Revenue.

Attorneys for Defendant.

[Endorsed]: Filed Dec. 17, 1946.

[Title of District Court and Cause.]

ORDER

The parties having so stipulated, it is hereby Ordered that the defendant may have to and including the 15th day of February, 1947, in which to answer or otherwise plead in the above-entitled matter.

Done in open court this 17th day of Dec., 1946.

/s/ CHARLES H. LEAVY,  
United States District Judge.

Presented by:

/s/ HARRY SAGER,  
Asst. U.S. Atty.

O.K.

/s/ ROBERT H. EVANS.

[Endorsed]: Filed Dec. 17, 1946.

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[Title of District Court and Cause.]

ANSWER

Defendant answers as follows:

1.

Admits the allegations contained in paragraph I of the complaint except denies that the interest or any portion thereof was erroneously or illegally assessed or collected.

2.

Admits the allegations contained in paragraph II of the complaint.

3.

Admits the allegations contained in paragraph III of the complaint.

4.

Admits the allegations contained in paragraph IV of the complaint except denies that the adjusted excess profits net income was shown in the return in the amount alleged and avers that the adjusted excess profits net income disclosed by the return is in the amount of \$1,884,586.83, and that the figure alleged in paragraph IV of the complaint in the amount of \$2,584,101.85 was shown on the return as the excess profits net income prior to adjustment.

5.

Denies all the allegations contained in paragraph V of the complaint except admits that plaintiff's adjusted excess profits net income for the calendar year 1942, as disclosed by the return, computed without reference to Section 722 of the Internal Revenue Code, exceeded 50% of plaintiff's normal tax net income reported for said year, computed without the credit provided in Section 26(e) of the Internal Revenue Code; and further admits that plaintiff claimed the benefits of Section 722 of the Internal Revenue Code in its final excess profits tax return for the calendar year 1942, and that

plaintiff reduced the amount of the excess profits tax, computed without the benefit of Section 710(a)(5) of the Internal Revenue Code, by the amount of \$135,203.36.

6.

Admits the allegations contained in paragraph VI of the complaint.

7.

Admits the allegations contained in paragraph VII of the complaint.

8.

Admits the allegations contained in paragraph VIII of the complaint except defendant avers that the amount of excess profits tax liability reported in plaintiff's return, adjusted for renegotiation, in the amount of \$1,291,432.31, is exclusive of the additional assessment of \$135,203.36 representing the deferred payment under Section 710(a)(5) of the Internal Revenue Code.

9.

Admits the allegations contained in paragraph IX of the complaint except denies that the sum of \$135,203.36 represented a reduction in the tax.

10.

Denies all the allegations contained in paragraph X of the complaint except admits that pursuant to the alleged assessment plaintiff paid the alleged additional tax and interest thereon at the rate of

6% per annum from March 15, 1943, to the date of payment thereof; the alleged deficiency and interest was paid or satisfied by credit in the amounts and on the dates as follows: On October 14, 1944, there was paid or credited \$183,514.93; on November 30, 1944, there was paid \$11,762.50; and on December 7, 1944, there was paid \$117.62. Defendant admits that the sum of \$11,880.12 representing interest on \$135,203.36 from March 15, 1943, to November 30, 1944, was included in the payments above alleged.

## 11.

Denies all the allegations contained in paragraph XI of the complaint except defendant admits that interest of \$11,880.12 paid by plaintiff was assessed and collected for the period from March 15, 1943, to November 29, 1944, on the sum of \$135,203.36, which was, at the election of plaintiff, deferred under Section 710(a)(5) of the Internal Revenue Code, and that said sum of \$135,203.36 was not demanded of plaintiff until after August 29, 1944.

## 12.

Denies all the allegations contained in paragraph XII of the complaint.

## 13.

Denies all the allegations contained in paragraph XIII of the complaint except admits that on or about November 30, 1944, plaintiff filed with the Collector of Internal Revenue for the District of Washington an instrument purporting to be a claim



for refund in the amount of \$11,880.12 and that Exhibit B attached to the complaint is a copy of what it purports to be. Defendant further admits that on or about March 21, 1945, the Commissioner of Internal Revenue rejected the purported claim and that Exhibit C attached to the complaint is a true copy of what it purports to be.

14.

Denies all the allegations contained in paragraph XIV of the complaint except admits that no part of the amount sought to be recovered has been refunded or credited to plaintiff.

Wherefore, having fully answered defendant prays judgment and costs.

/s/ J. CHARLES DENNIS,  
United States Attorney.

/s/ THOMAS R. WINTER,  
Special Assistant to the Chief  
Counsel, Bureau of Internal  
Revenue.

Receipt of copy acknowledged.

[Endorsed]: Filed Feb. 14, 1947.

[Title of District Court and Cause.]

### STIPULATION

It is stipulated between the plaintiff and the defendant, through their respective attorneys of record, that because of negotiations now pending which may lead to a settlement and dismissal of the above case, that the same may be stricken by the court from its setting November 5, 1947, and be continued upon the calendar of the court until called for setting by the attorneys of record.

Dated this 20th day of October, 1947.

/s/ GEO. H. KOSTER,

/s/ BAILEY KOHLMIER,

/s/ ROBERT H. EVANS,

Attorneys for Plaintiff.

/s/ J. CHARLES DENNIS,

United States Attorney.

/s/ THOMAS R. WINTER,

Special Assistant to the Chief Counsel, Bureau of  
Internal Revenue.

Attorneys for Defendant.

[Endorsed]: Filed Oct. 22, 1947.



[Title of District Court and Cause.]

ORDER

In consideration of the stipulation signed and filed herein,

It Is Ordered that the above cause be stricken from the trial calendar of the court.

Done In Open Court this 22nd day of Oct., 1947.

/s/ CHARLES H. LEAVY,  
U.S. Dist. Judge.

Okeh:

/s/ ROBERT H. EVANS,  
Atty. Plaintiff.

/s/ THOMAS R. WINTER.

Presented by:

/s/ [Illegible]  
Asst. U.S. Attorney.

[Endorsed]: Filed Oct. 22, 1947.

[Title of District Court and Cause.]

### ORDER

The undersigned judge of the above entitled court having determined that he is disqualified to sit at the trial or other disposition of the above cause, hereby orders and directs that the above action be transferred to the Northern Division of the Western District of Washington at Seattle for trial or other disposition, counsel for the respective parties having approved of this order.

Done In Open Court this 13th day of Aug., 1948.

/s/ CHARLES H. LEAVY,  
U.S. Dist. Judge.

We, the undersigned attorneys for the parties above named, hereby approve the foregoing Order.

EVANS, McLAREN, LANE,  
POWELL & BEEKS,

By /s/ ROBERT H. EVANS,  
Attorneys for the Plaintiff.

/s/ J. CHARLES DENNIS,

/s/ THOMAS R. WINTER,  
Attorneys for Defendant.

[Endorsed]: Filed Aug. 13, 1948.

[Title of District Court and Cause.]

MOTION TO PLACE ON THE TRIAL  
CALENDAR

Comes now the Plaintiff, through its attorneys,  
Messrs. Evans, McLaren, Lane, Powell & Beeks,  
and moves the above entitled court to place the  
above entitled cause upon the trial calendar of the  
above entitled court.

EVANS, McLAREN, LANE,  
POWELL & BEEKS,

/s/ ROBERT H. EVANS.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 16, 1948.

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[Title of District Court and Cause.]

NOTICE OF HEARING

To: The clerk of the above entitled court and to  
Messrs. J. Charles Dennis and Thomas R.  
Winter, Attorneys for Defendant, Clark Squire,  
United States Collector of Internal Revenue,  
for the State of Washington:

You will please take notice that the undersigned  
will bring on for hearing the motion to place on the  
trial calendar heretofore filed by the Plaintiff be-  
fore the above entitled court, in the United States  
Court House, Seattle, Washington, on the 20th day

of September, 1948, at 10:00 o'clock A.M. on that day or as soon thereafter as the Attorneys can be heard.

EVANS, McLAREN, LANE,  
POWELL & BEEKS,

/s/ ROBERT H. EVANS,  
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 16, 1948.

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In the District Court of the United States in and  
for the Western District of Washington, North-  
ern Division

No. 2077

PUGET SOUND PULP AND TIMBER CO.,  
Plaintiff,

vs.

CLARK SQUIRE, United States Collector of In-  
ternal Revenue for the State of Washington,  
Defendant.

October 20, 1948.

Black, J.

HEARING FOR PERPETUATION OF  
TESTIMONY

of Lawson P. Turcotte, a witness for Plaintiff.

Mr. Coster: This case is a suit for recovery of  
some interest paid on certain additional excess

profits taxes that were assessed against the Puget Sound Pulp & Timber Company for the year 1942 and collected by the defendant, the Collector of Internal Revenue, from the plaintiff in October 1944. Included in this additional tax was a sum of approximately one hundred thirty-five thousand dollars which the plaintiff had a right under the law to defer until the Collector [1] made demand for the payment. When the Collector made the demand he charged interest on this \$135,000 from March 15, 1943, which was the due date of the 1942 tax rather than September 30, the date of his demand.

It is our position that no interest should have been charged on this particular sum of money until the date of the demand.

In order that the Court may understand the testimony we are about to take here, the reason that this taxpayer had a right to defer this amount of money was this. In 1942 there was in effect the excess profits tax law which imposed a tax of 90% on profits above a certain credit. Congress realized that some companies might be discriminated against in that they did not have adequate credit. So Congress provided a law which gave the right to apply for relief from that tax if they met certain conditions. At the same time Congress also gave to those companies who thought that they qualified for relief the right to defer the payment of a certain amount of the tax.

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\* Page numbering appearing at top of page of original Reporter's Transcript.

In this particular case the Puget Sound Pulp & Timber Company filed a claim for relief when it filed its tax return and deferred the payment of this \$135,000 tax which it had a right to defer under the law. [2]

Now, ordinarily, a tax is due for payment at the time the return is filed, but in this particular instance the law gave the taxpayer the right to defer.

Also, ordinarily, if there is an additional tax due there is interest to be charged on this additional tax from the date the return is due. The statute provides that the interest is to be charged from the date prescribed for payment of the tax.

Now, in the case of the deferred tax it was eliminated from the amount of the tax that was prescribed for payment on the due date of the return, and the law provided that if ultimately it shall become due, it shall be paid as a deficiency and the date prescribed for the payment of the deficiency is the date of the notice and demand from the Collector.

So we present this case on the point that inasmuch as the date prescribed for payment of this tax was not until demand for payment, the interest should not start until that date. And there are some eleven or twelve thousand dollars worth of interest involved in this case.

And I might say in that connection that there is some computation of this interest and other figures which is slightly technical, and counsel and I have agreed that if the Court should find that this tax-



payer [3] is entitled to refund, we can compute the amount of the judgment. The actual computations are not necessarily involved in the presentation of the case.

The Court: All right. Is there anything you wish to say, Mr. Winter?

Mr. Winter: No, I think counsel has advised the Court as to the issue. The sole issue is whether or not the plaintiff was required to pay interest on excess profits taxes which were deferred between the time of deferment and the time their claim under 722 was denied. Plaintiff apparently takes the position that inasmuch as it was not required to pay because of the deferment statute and no demand was made upon the plaintiff for the payment because it was entitled to defer it until the Commissioner decided the issue as to whether or not they were entitled to relief under 722, that it relieved it of the payment of that interest.

It is the government's position that that is a deficiency and when a deficiency is finally denied there is due interest on the deficiency which has not been paid, and to grant relief to a taxpayer similarly situated would be giving relief to such a taxpayer and denying relief to other taxpayers who did make any claim under the statute. In other words, the taxpayer did not pay the money; it had a deficiency; it was finally determined [4] it had a deficiency as of March 15, 1943 of this \$135,000; it was not paid until November, 1944. At that time interest, of course, was collected. The tax was

assessed as a deficiency as of March 15, 1943, when it was due. And it is our position there is nothing in the statute or regulations which grants plaintiff relief in this action.

It is primarily and purely a question of law and interpretation of the tax statute.

The Court: How much time do you think the presentation of the evidence will take after this witness?

Mr. Coster: In regard to this one witness, we are willing to submit it this afternoon and leave your Honor freed of tomorrow's calendar. We just have some exhibits.

The Court: How long do you think examination of this witness will take today?

Mr. Coster: Five minutes.

The Court: Let me read the pleadings again to refresh my recollection.

(Court does so.)

Mr. Coster: I might add one thing. The pleadings establish the filing of the return, the filing of the claim for relief with the return, the assessment of additional tax and demand for additional tax and interest. The only reason we have the witness here to testify is that [5] I felt it important inasmuch as the filing of claim was a reason for the deferment. That would show it was a bona fide claim and not merely for the purpose of deferring the tax. The only other testimony is the exhibits showing notice and demand.



Mr. Winter: Before your Honor starts reading the pleadings there is one further matter I want to call to the attention of the Court. Since the commencement of this action a deficiency of \$194.58 income tax and an over assessment of \$14,674.63 in excess profits tax has been allowed and the deficiency paid. The deficiency—that is with respect to this taxable year—the over assessment was caused by allowance of additional timber depletion, which is not in issue in this case, and is covered by refund claim, which refund claim was allowed and paid. I am not certain as to whether or not part of the interest which is sought to be recovered here has not been recovered and paid under that refund claim.

Counsel has agreed with me that we will submit to your Honor for decision in this case whether or not—the sole legal question as to whether or not interest is collectable or is not collectable. Your Honor is to answer either affirmatively or negatively whether it is or is not collectable. And based upon your Honor's decision in that matter we will then submit a form of judgment. If your [6] Honor finds it is not collectable, then we will have to compute the amount. But there is no quarrel. In other words, we will submit it under Rule—similar to Rule 50 in the Tax Court. We can work the computation out amongst ourselves. So that your Honor will only be concerned with the question of law, and that is whether the interest is or is not collectable.

The Court: I so understood from the opening statement by counsel for plaintiff.

Mr. Coster: I would like to call Mr. Turcotte.

### LAWSON P. TURCOTTE

was called as a witness for plaintiff, and after being first duly sworn, on oath testified as follows:

#### Direct Examination

By Mr. Coster:

Q. Will you state your full name, please?

A. Lawson P. Turcotte.

Q. Where do you live?

A. Bellingham, Washington.

Q. Are you associated with the Puget Sound Pulp & Timber Company, the plaintiff in this case?

A. I am. I am executive vice-president of the company.

Q. How long have you been executive vice-president of the company? [7]

A. Since 1942.

Q. The pleadings in this case, Mr. Turcotte, show that the Puget Sound Pulp & Timber Company filed an excess profits return for the year 1942 and also a claim for relief from excess profits tax under Section 722 of the Internal Revenue Code. Did you have anything to do with the filing of that claim?

A. I supervised the preparation of the claim together with our tax counsel and executed the claim for filing with our 1942 income tax return.

(Testimony of Lawson P. Turcotte.)

Q. What was the reason for the filing of the claim?

Mr. Winter: I object to that question as irrelevant and immaterial. The claim speaks for itself. It calls for a conclusion of the witness. I have a verified copy of the claim that was filed at that time.

Mr. Coster: The only purpose of the testimony is to avoid any possible inference that the claim might have been filed solely for the purpose of deferring payment of the tax. I want to show the reason for the filing of the claim. The claim shows what it is, but it does not show the reason.

Mr. Winter: It also shows upon what basis and what contentions were made therein, and I submit the claim is the best evidence of what it contains.

The Court: Will you read the question, Mr. Reporter? [8]

(Reporter reads question objected to.)

The Court: Objection has been made. Ruling will be reserved on the objection, and it will be understood that the witness may now be examined so as to make an offer of proof under oath. You may examine the witness, and it will be an offer of proof, and if I later determine that the testimony should be admitted, that will suffice. Otherwise your record will be clear as to what you wish to prove.

A. In answer to that question, we felt—the offi-

(Testimony of Lawson P. Turcotte.)

cers of the company felt that the tax was discriminatory to the company, and we felt that we were entitled to relief under Section 22 as provided by the law.

Q. Section 722?

A. I beg your pardon; 722 of the law.

Q. Now, Mr. Turcotte, the pleadings show that on August 29, 1944 the Commissioner of Internal Revenue rejected the claim for relief——

The Court: This question, I take it, is outside the offer of proof, Mr. Winter?

Mr. Winter: Yes, your Honor; I think we admitted that the Commissioner rejected the claim.

Mr. Coster: It is admitted in the pleadings.

Mr. Winter: We admit the Commissioner denied relief.

Q. Did you have any negotiations with any officers of the [9] Commissioner of Internal Revenue about this claim? That is, after August 29, 1944?

A. Yes, in 1947 the case was reopened and reviewed with the local Internal Revenue Department, who granted the company a certain portion of relief under our application for relief and recommended this relief to Washington.

Q. Did you then have any further negotiations with any other offices of the Commissioner of Internal Revenue?

A. Well, in 1948 the newly appointed counsel for the Internal Revenue Department gave our

(Testimony of Lawson P. Turcotte.)

company a hearing which I attended. That was in 1948. And they rejected the recommendation of the local Internal Revenue Department.

Q. Now, has the company filed a petition with the Tax Court appealing the rejection of the claim for relief?

A. The company has since rejection filed an appeal to the Tax Court.

Mr. Coster: No further examination, your Honor.

#### Cross-Examination

Q. (By Mr. Winter): As I understand your testimony then, Mr. Turcotte, you filed your claim for relief under 722, and you executed it?

A. Yes.

(Document marked Defendant's Exhibit "A" for identification.)

Q. I will show you what purports to be a photostatic [10] copy—a certified copy of the claim. Is that the claim which you filed or copy of the original of that claim?           A. Yes, it is.

Q. Now, as I understand it, you had a hearing—did you have a hearing before the Commissioner on the claim or before a representative of the Commissioner in the revenue agent's office? Before it was rejected, I mean.

The Court: There are too many questions in that.

Mr. Winter: I will withdraw it.

(Testimony of Lawson P. Turcotte.)

The Court: All the questions are withdrawn.

Q. After you filed your claim Exhibit A, then that was denied, is that right?

A. That is right.

Q. By the Commission. And that was in 1944, August 1944? A. Yes.

Q. On August 30, to be exact.

Mr. Coster: August 29.

A. I don't have the exact date.

Q. And I think you said that the claim was reopened after the appointment of tax counsel?

A. That is my understanding.

Q. And then you had conferences with the revenue agents? A. That is right.

Q. And it is your understanding they recommended some relief? [11]

A. They recommended some relief.

Q. But the Commissioner never granted that relief, and no relief has ever been granted up to the present time?

A. No relief has been granted.

Q. Relief was considered on the rehearing or upon the re-examination, and it was denied?

A. That is right.

Q. And you have now filed a petition with the Tax Court?

A. That is correct.

Q. For relief under 722?

A. That is correct.

Q. And that petition is still pending?



(Testimony of Lawson P. Turcotte.)

A. That is right.

Q. And no hearing has been held?

A. Not that I know of. We have had no notice of it.

Mr. Winter: That is all.

(Witness excused.)

Mr. Coster: At this time I wish to introduce as plaintiff's exhibit 1 a copy of the Collector's notice and demand for the payment of the additional tax for 1942, referred to in the pleadings.

Mr. Winter: We have no objection.

The Court: What is that?

Mr. Coster: The Collector's notice and demand for payment of additional tax for 1942, dated September 30, [12] 1944.

The Court: Exhibit 1 is offered. (Pause) There is no objection.

Mr. Winter: No objection.

The Court: And it is admitted.

(Plaintiff's Exhibit 1 for identification received in evidence.)



## PLAINTIFF'S EXHIBIT No. 1

Copy

Statement of Income Tax Due

Form 17A—Rev. Feb. 1947, Treasury Department  
Internal Revenue Service.

Date: EP Int.

Assessment: \$179,199.48, \$16,127.95.

Amount Paid: . . . . .

Balance Due: \$195,327.43.

Account Number and Remarks: Sept. 22—529-  
007-44; Rar Adt'l 1942 IT.

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 per cent per annum from the date shown to the right until paid.

Puget Sound Pulp &amp; Timber Co.

Laurel &amp; Bay St.

Bellingham, Wash.

Date: Sept. 30, 1944.

To avoid further interest, the amount stated above  
must be paid to the

Collector of Internal Revenue  
at Tacoma, Washington within 10 days of the date  
of this notice.

Admitted 10/20/48.

[Endorsed]: Filed Sept. 27, 1949.

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Mr. Coster: I wish to introduce as Plaintiff's  
Exhibit 2 a second notice and demand from the Col-  
lector relating to the same tax. It is dated October  
30, 1944.

Mr. Winter: No objection.

Mr. Coster: Plaintiff rests.

The Court: Exhibit 2 admitted.

(Plaintiff's Exhibit 2 for identification re-  
ceived in evidence.)

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PLAINTIFF'S EXHIBIT No. 2

Copy

Statement of Income Tax Due—Second Notice

Date: EP Int. 10/14/44, 10/14/44.

Charge: \$179,199.48, \$16,127.95.

Last Credit: \$13,508.30, \$170,056.63.

Unpaid Balance: \$11,762.50.

Account Number and Remarks: Adt'l 1942 IT  
RAR, Sept. 22-529007-44.

Puget Sound Pulp & Timber Co.

Laurel & Bay St.

Bellingham, Wash.

Date of First Notice: Sept. 30, 1944.

Date of This Notice: Oct. 30, 1944.

The records of this office indicate that you are delinquent in making payment of the unpaid balance of tax and/or interest shown above.

It therefore becomes my duty to demand that this unpaid balance be paid, together with interest computed at the rate of 6 per cent per annum from the date prescribed for its payment to the date of payment, which interest has been incurred by failure to pay the unpaid balance within the prescribed time. If payment of the amount due the Government is not received within ten days from the date of this notice and demand, the Law provides that collection with costs may be made, if necessary, by seizure and sale of property.

To Insure Proper Credit, Return This Form with Remittance to the Collector of Internal Revenue at .....

Unpaid balance: \$11,762.50.

Delinquency interest computed from 9-30-44 to 11-9-44, \$117.62.

Total unpaid balance and interest thereon due as of the date indicated above, \$11,880.12.

/s/ CLARK SQUIRE,

Collector of Internal Revenue.

[Endorsed]: Filed Sept. 27, 1949.

Admitted 10/20/48.

The Court: All right, Mr. Winter.

Mr. Winter: Defendant rests.

The Court: Defendant rests.

Mr. Coster: Your Honor, I would like to ask leave to file a brief for plaintiff at this time in lieu of oral argument. The reason, I might say, is that this particular point,—it is the first time as far as I know that it has come before the court for adjudication, and it involves several very technical sections of the Internal Revenue Code. And I feel it [13] would be much better to present it by brief than argue it orally. For that reason I have already prepared a brief for plaintiff and am ready to file it.

The Court: You may file the brief.

(Mr. Coster does so.)

Mr. Winter: I would like to have some time, your Honor. I would like to submit this to the Attorney General to see whether or not that office desires to file a brief. They said they did previously.

The Court: How much time would you like?

Mr. Winter: I would like to have thirty days.

The Court: The defendant may have until and including Friday the 19th day of November, 1948 in which to serve and file an answering brief. That is Friday, November 19. That is thirty days from today.

Mr. Winter: Mr. Coster, with your permission—I don't know whether the Court would be interested

in this—I was going to suggest that I have a copy of Section 722 of the Code, but your Honor probably will not want to consider it until both briefs are filed. So therefore I will wait and file it with our brief. I also have a photostatic copy of the legislative history.

The Court: If you have it, why don't you file it [14] now? Then you will not forget.

Mr. Winter: I think I will file both of them now. (Mr. Winter does so.)

Mr. Winter: I have a copy of the Finance Committee's report accompanying House Resolution 3363 and both Section 722,—I just want to file them as part of the argument for the information of the Court, and they will be referred to in the brief.

The Court: The time I have allowed you is sufficient, is it?

Mr. Winter: I hope so, your Honor. I made it as reasonably short as I could——

The Court: I am willing to give you a little more time if you think you ought to have it.

Mr. Winter: I would prefer to have it just thirty days now, with leave of Court and counsel to ask, if necessary, for additional time as may be necessary.

The Court: How much time would you like for reply brief?

Mr. Coster: Oh, I think probably ten days from the time of service of defendant's brief. I don't

know what else I can say more than I have already said.

The Court: Where is service to be made?

Mr. Coster: Here, at the office of Mr. Evans.

Mr. Winter: Mr. Evans is co-counsel. [15]

The Court: All right. The plaintiff may have fourteen days from service of the defendant's answering brief in which to file and serve a reply brief. I may say to counsel for defendant the Court may be somewhat embarrassed in this case with respect to Defendant's Exhibit A for identification. What I have said as to Exhibit A for identification ought to remind defendant as to the state of the record.

Mr. Winter: I am satisfied.

The Court: You are satisfied. In other words, Exhibit A is not in evidence?

Mr. Winter: That is right. I don't think it is material because we admit that a claim was filed and it was denied. I may say to the Court we are not going to argue to the Court that the plaintiff did not believe it had a meritorious claim under 722.

The Court: Why shouldn't Exhibit A be admitted if it is referred to?

Mr. Winter: I would just as soon have it considered part of the record.

Mr. Coster: I would introduce it.

Mr. Winter: We will both jointly introduce it.

The Court: All right. Plaintiff and defendant jointly offer Exhibit A for identification. Is that right? [16]

Mr. Winter: Yes, I think what counsel had in mind——

The Court: Then Exhibit A is admitted.

(Defendant's Exhibit A for identification received in evidence.)



## Exhibit A—(Continued)

History of Puget Sound Pulp and Timber Co. and  
Detailed Description of the Character of the  
Business Carried On.

The Puget Sound Pulp and Timber Co. was incorporated March 11, 1929, under the laws of the state of Delaware. Upon its organization in 1929 it acquired in exchange for its capital stock certain properties then owned by various corporations and individuals, consisting of an unbleached sulphite mill (40 tons daily capacity) at Anacortes, Washington, a similar mill with larger capacity (60 tons) at Bellingham, Washington; properties located at or near Clear Lake, Skagit County, Washington, consisting generally of a sawmill, shingle mill, capital stock in Puget Sound & Cascade Railway Company, certain timber lands, logging equipment, shops and miscellaneous properties; also certain property at Lake Stevens, capital stock of Hartford Eastern Railway Company, certain timber lands and miscellaneous properties. Shortly after its organization the Company purchased a site for a pulp mill at Everett, Washington, and constructed thereon a 200-ton daily capacity bleached sulphite pulp mill which was completed in 1930 at a cost of approximately \$4,250,000. The money required for this purpose was obtained through a loan secured by a mortgage on all of the property and assets of the Company in the amount of four and a half million dollars.

The mill property at Clear Lake and the two railroads required a considerable expenditure of addi-

## Exhibit A—(Continued)

tional capital for the purpose of placing them in an operating condition. Due to these expenditures and to conditions beyond the control of the Company the Company defaulted in the payment of the mortgage interest due February 15, 1932, and foreclosure was threatened. The issue was settled by a division of the property, the mortgagee taking the new mill at Everett and the stock of the Hartford Eastern Railway Company and the miscellaneous properties in Snohomish County in full satisfaction of its mortgage, the Company retaining the mill at Anacortes, the mill at Bellingham, the lumber and shingle mill and logging equipment in Skagit County and the capital stock of the Puget Sound & Cascade Railway Company. It may be said that the principal reason for the default on the mortgage was the depression which occurred in the United States in 1932 together with the fact that the pulp the Company was producing was sold in competition with pulp from the Scandinavian countries who by that time had depreciated their currencies. This enabled the Scandinavian dealers to sell at an advantage over domestic manufacturers. This competition wrecked the pulp market in the United States.

It may be said that the properties which the Company salvaged from its division of the mortgage consisted of two initially built plants in the state of Washington for the production of unbleached shredded pulp. These plants were more or less pilot plants as they were the first built in the Northwest.

## Exhibit A—(Continued)

Due to many improvements which occurred later the Company found it impossible to compete on the domestic market and decided to modernize its plant at Bellingham. This was done in 1937 through the sale of a preferred stock issue in the amount of two and a half million dollars, the proceeds of which with other capital were used to build an up-to-date plant as an extension to the Bellingham plant. The Company continued to operate the mill at Anacortes until it sold this plant to the Scott Paper Company in 1940.

In 1936 the Company disposed of the sawmill and shingle mill at Clear Lake by dismantling and sale of same. The proceeds of this sale were used to retire obligations payable upon a loan secured by the Company from the Reconstruction Finance in 1932. The Company continued to operate the old and the new plant at Bellingham at full capacity until its operations in that regard were restricted by orders of the War Production Board in October, 1942. It should be added that in 1937 the Company further extended its Bellingham plant by the addition of certain new machinery and certain digesters, so that by the end of that year the plant was capable of producing approximately 170 thousand tons annually.

In the years 1940 and 1941 the Company realized that its timber holdings were insufficient to supply the Company with a source of raw material and in order to help out this situation it purchased certain

## Exhibit A—(Continued)

timber holdings in British Columbia, Canada, at an outlay of approximately two million dollars. The money for this purchase was financed by extended bank loans of one million six hundred fifty thousand dollars, the remaining cost of the properties being paid for by the Company out of current working capital. It is estimated that the properties so acquired contain some four billion feet of virgin timber consisting of fir, cedar and pulp specie timber, together with a certain logging railroad and other logging equipment, etc.

The principal character of the Company's business as carried on through the years is in the manufacture and producing of unbleached sulphite pulp, the Bellingham mill now having a capacity, as stated above, of 170,000 tons per annum. The logs produced from the logging operations of the Company in the United States, other than pulp species, have been sold on the open market, the pulp species having been used in the Company's manufacturing processes. It was hoped that at the time the properties in Canada were acquired the Company could secure a source of raw material from its logging operations carried on there. This, however, it has been unable to do except in a limited way, owing to Canadian restrictions since imposed on the export of logs.

It is quite difficult for this Company to submit financial data prior to the years 1936 and 1939 which would prove a guide to the possible earnings of the

## Exhibit A—(Continued)

Company, principally for the reason that in the years 1929 and 1930 it was carrying on a building and rehabilitation program and in 1932 the nationwide depression occurred, which was further aggravated by the unfair competition from the dumping of pulp by foreign countries on the markets of the United States. These circumstances, as we have said above, forced the Company to default on its mortgage and in order to avoid foreclosure it had to give up its new and up-to-date mill in Everett. The years 1934 and 1935 were spent largely in an effort to rehabilitate the Company's position so as to place it where it could obtain sufficient finances to operate successfully. During these years, however, pulp prices on the domestic market were unreasonably low as shown by the fact that in the ten years from 1922 to 1932 the normal prices of pulp ranged from \$55 to \$60 per ton Atlantic seaboard. In 1932 these prices dropped to as low as \$34 per ton Atlantic seaboard. Accurate statistics supporting these statements are available in government reports.

## Statement Establishing Normal Earnings

The taxpayer believes that its normal earnings can best be established by elimination of the abnormal conditions which prevailed during the latter part of 1937, and during the years 1938 and 1939.

First, the taxpayer believes that the price for its product was abnormally low in 1939 due to the



## Exhibit A—(Continued)

dumping of foreign pulp which commenced in the latter part of 1937. Therefore, it is necessary to determine what is the normal price of pulp for that year. Taxpayer believes the normal price of pulp should be the average adjusted price from January 1, 1935 to December 31, 1938 as used in the computation shown in the accompanying Schedule. This price should be applied to all of the taxpayer's domestic sales of pulp for the year 1939 to determine the normal returns from sales of domestic pulp during that year.

Secondly, an adjustment should be made by reason of the increased capacity of taxpayer's mill. This adjustment would be applied to the earnings of the Company from January 1, 1936, to December 31, 1939. Therefore, there should be added to the profits for this period the additional amount of profits which would have been realized had the amount of increased capacity been available by January 1, 1936.

Third, the earnings for the years 1937, 1938 and 1939 should be adjusted to reflect the loss of the Japanese markets. There should be included in the earnings for those years the amount of profit which the Company would have realized had the contracts with the Japanese customers been completed according to their terms. When proper adjustment is made for each of the base period years by the application of the foregoing factors the taxpayer be-

## Exhibit A—(Continued)

believes that those years will then reflect its normal earnings.

## General

In the data submitted herewith, we have attempted to point out that the Company's income in the base period years is abnormal and not a fair basis for tax purposes in view of conditions which prevailed prior to the base period years and during such years. We have attempted to suggest a basic formula which we believe is fair and should be applied to our particular situation. However, we should be pleased to submit such additional information as may be required in connection with your consideration of this application. A complete record of the Company is on file with Mr. W. P. Ullman in the Treasury Department, together with audit statements, etc., previously prepared.

## Schedule B.

1. Normal production, output, or operation was interrupted during the base period because of unusual and peculiar events. (Section 722 (b)(1).

(a) Describe the events and time of occurrence.

Normal production and operation of the Company's plants were interrupted during the years of 1938 and 1939 because of the following unusual and peculiar events. In 1937 the Company contracted at the then prevailing market prices for the sale of 65,000 tons of pulp, representing approximately



## Exhibit A—(Continued)

60% of the Company's entire output, to responsible paper mills in Japan. These paper mills had been customers of the Company since 1929 and the tonnage sold was comparable in the percentage of total production, and in actual tonnage to the pulp sold to these firms in prior years. In fact, the tonnage sold represented old as well as new business, but at higher prices. These orders were firm commitments and the Company would have realized a substantial profit therefrom in 1937 and a somewhat larger profit in 1938, as the major portion of the tonnage sold was for shipment in the last mentioned year. A list of the Company's Japanese customers, date of each contract, tonnage and sale price is listed in Exhibit "A" hereto attached. In the fall of 1937 the Company was advised by its customers in Japan that because of the Japanese-China war they were unable to secure permits from the Japanese government for the necessary foreign exchange to complete their contracts of purchase. Consequently all of this business was lost to the company. In the meantime domestic prices had dropped sharply due to the dumping of foreign pulps in the United States. The loss of the Japanese customers not only forced the Company to sell where it could on the domestic market at the lower prices, but to find new customers for approximately 60% of its entire output and some of its pulp it did not succeed in selling at all during the period.

(b) State taxable years in the base period dur-

Exhibit A—(Continued)

ing which production, output, or operations were affected.

Due to conditions stated above the Company was forced to shut down one of its plants for the entire year of 1938 and for 10 months in 1939, and another of its plants for 2 months in 1938. Following is shown the capacity of the Company's plants for the two years mentioned, as well as the actual production.

	<u>Capacity Tons of 2000#</u>	<u>Production Tons of 2000#</u>	<u>Rate of Production to Capacity</u>
1938 .....	84,000	47,682	56.76%
1939 .....	115,000	94,416	82.10%

2. The business of the taxpayer was depressed during the base period or the taxpayer was a member of an industry which was depressed during the base period because of temporary and unusual economic events. (Sections 722 (b) (2).

(a) Describe the temporary economic events unusual in the case of the taxpayer or an industry of which it was a member.

The temporary economic events unusual in the case of this Company are stated under two headings.

(1) Loss of business in 1937 and 1938 unusual and beyond the control of the Company.

Under this heading reference is made to statement under 1(a) describing the loss of 65,000 tons of pulp orders with Japanese customers which caused an economic dislocation of the Company's business in the base years of 1937 and 1938 as

## Exhibit A—(Continued)

well as having a direct bearing on the Company's business in 1939.

(2) Foreign competition and dumping of pulp into the United States markets.

Continued dumping of foreign pulps into the United States markets was prevalent in the years 1938-1939 and this Company appealed to the United States Treasury Department for relief from this dumping in a formal application under date of May 16, 1939, in which hearings were held in the Treasury Department under Mr. W. P. Uhlmann, and in connection with that application the Company made full disclosure of the effect of this dumping on the Company's business and its inability to continue operations if this dumping was not stopped. The Company's application did not result in any relief from the Government under the Anti-Dumping Law. The application was supported by fully audited statements of the history of the Company and the effect of this unfair foreign competition which came about through the "freezing" of foreign wood-pulp to the "free" list for entry into the United States.

As an illustration of comparison of imports during the base years of 1936-1939 with those of prior years, following are the import figures for the 4 year periods cited:

Years 1928-1931 7,062,329 tons

Years 1932-1935 7,163,555 tons

Years 1936-1939 8,408,939 tons

## Exhibit A—(Continued)

Details of such dumping of pulps into the United States markets are more fully stated as follows:

During this period and up to the present time there has been no duty imposed on the importation of pulp into the United States, but there has been continuously in effect the Anti-Dumping Act of 1921 prohibiting the importation or the sale by foreign interests of competitive products at less than their foreign market value or cost of their production, marketing and sales expense, as defined in Sections 205-206 of said Act. During the base years 1936-1939 the productive capacity of domestic plants manufacturing sulphite pulp in the United States did not exceed the domestic demand for their product and had it not been for foreign competition and imports at prices below foreign market and cost, the taxpayer would have been able to market advantageously all of its productive capacity. However, during 1938 and up until the outbreak of war large quantities of foreign sulphite pulp were imported into the United States, principally from Canada and Baltic countries, and sold at prices substantially below the cost of production or foreign market and in violation of the Federal Anti-Dumping Act, upon which the taxpayer had naturally relied.

The effect of such importation and contracts made in connection therewith as more fully explained hereafter was to restrict sales of taxpayer's product to a figure substantially below its capacity.

## Exhibit A—(Continued)

These conditions also necessitated taxpayer selling its product at a very much reduced margin of profit, and oftentimes at a loss, determined by the prices at which imported pulp was offered. This situation prevailed up to the outbreak of the present world war at the end of August 1939, at which time restriction on shipping and cargo space, increases in freight rates, insurance, etc., completely changed the situation and while imports continued to arrive for a number of months, there was a restoration of normal prices and domestic demand. Taxpayer's business immediately revived and was operated at normal capacity for the last quarter of that year. This immediate effect upon taxpayer's business very strikingly illustrates the result of foreign dumping in the preceding period.

The situation presented in the foregoing paragraph not only involved a violation of positive provisions of law harmful to the taxpayer's business, but also involved, both as cause and effect, events of an extraordinary and unusual character arising out of the chaotic world conditions preceding the outbreak of the war which adversely affected the normal output of production and business both of the taxpayer and of the pulp industry. The picture is so complex that it is impossible to present the significant causes and effects in any great detail but the following will give a general idea of the broad outlines affecting the pulp industry and this taxpayer:



## Exhibit A—(Continued)

Producers of paper grade chemical pulp are in two classes: One comprises self-contained paper mills which make their own pulp for the most part, but may buy some when prices are low or sell surplus when prices are high. The other comprises producers of pulp for market which sell to the converting paper mills in competition with foreign pulp. Converting paper mills depend upon these two sources for their pulp supply. The natural tendency has been for the paper mills or pulp users to contract ahead for large commitments of foreign pulp when prices are low and these purchases of foreign pulp do not show up in the records of imports until one or two years after the purchase.

The method of selling and form of contract covering sales of sulphite pulp to domestic consumers is very greatly different as between the domestic and foreign (particularly European) producers. Contracts made by European exporters are on the basis of firm commitment covering a definite amount to be delivered over a future period, often as long as two years at specified prices. These contracts were written so as to be binding upon both buyer and seller. In reality they are one sided, putting the domestic buyer at a disadvantage, for while he is legally bound to comply with his contract and accept delivery, and the foreign exporter insisted on such obligation, he had no practical remedy against the seller, and under actual

## Exhibit A—(Continued)

conditions as they existed and developed during this period, the situation resulting from these contracts reacted increasingly to the advantage of the seller and to the disadvantage of the buyer.

On the other hand, contracts for the sale of domestic pulp are generally made subject to quantity and price adjustments and upon conditions which bind the seller to deliver a specified amount monthly over the year, but impose on the purchaser nothing more than an option to buy under such contracts. The seller names the price for each quarter about a month in advance and the buyer is then at liberty to take any or all or none of the amount called for in the contract. In a time of declining prices, such as existed in 1938 and the forepart of 1939, consumers were placed at the disadvantage of having to comply with foreign contracts, but at the same time were free to avoid any commitments to domestic producers.

The domestic market only includes the pulp moved on sales made to the paper mills by domestic and foreign pulp producers. European producers sold large quantities for delivery on long term contracts during 1936 and 1937 in U.S. markets, which buyers were ready to contract for owing to favorable market conditions. All markets were relatively low but stable during 1935 and 1936, with an increased demand. During 1937 European producers advanced prices in the spot market sensationally and by fostering a fear of scarcity were



## Exhibit A—(Continued)

able to contract with domestic buyers for delivery during 1938 and 1939 at materially advanced prices. This resulted in a wide spread, during the year, between spot prices and on pulp being currently delivered on both foreign and domestic contracts.

Late in 1937 and increasingly into 1938 as the war clouds gathered in Europe, German owners of pulp mills, including some in the Baltic states and Finland, dumped pulp in the U.S. markets in order to get the dollar exchange and took other steps having similar effects in their effort to obtain U.S. dollars. Sales of pulp were subsidized by foreign governments. During 1938 and 1939 many thousands of cords of Canadian pulpwood were purchased by Germany in Canada, shipped from Montreal, Halifax and other ports to Germany to be made into pulp which was sold in the U.S. at prices hardly sufficient to pay for the price of the wood alone, to say nothing of conversion costs and freight. The freight rates on pulp carried from the Baltic and Scandinavian countries to the Atlantic Seaboard or to the Pacific coast via the Panama Canal were reduced to approximately 60% of the rates on like shipments in the reverse direction, and for delivery to the Atlantic Seaboard to about 50% of the cost of such delivery from the Pacific Coast. For example, the rate for shipment from the Pacific to the Atlantic Coast points was \$7.00 per short ton, against which delivery could be made from Norway, Sweden and Germany at a

## Exhibit A—(Continued)

cost of \$3.57 per short ton. Subsidies in one form or another were granted by the foreign governments to pulp producers and transportation companies covering the export of foreign pulp to this country. Currency depreciation in the countries of the "Sterling Bloc" amounted to about 9% from December 1937 (and in the case of Finland to about 121½%) to September 1939 and gave European producers an advantage over domestic producers of \$3 to \$4 per ton in the U.S. market. Lower labor costs and insurance rates further benefited the foreign producers and depressed the local market. As an example, during 1938 labor costs per ton of pulp amounted to \$6.64 while comparable cost for production in Sweden, Norway and Germany amounted to \$2.24, and in Finland to only \$1.20.

In the early part of 1937 and through the summer of that year foreign producers, including the Canadians, realized the trend of exchange and subsidy advantages and proceeded to contract for sales in the domestic market for delivery not only during 1937 but into and in some cases through 1938, to the limit of their supply. These contracts were not made directly with foreign shippers, but rather with agents or companies or corporations in the U.S., principally in New York and Massachusetts acting on their behalf. Such contracts were firm as to both delivery and price. Having made these contracts and with their potential position in mind

## Exhibit A—(Continued)

the foreign producers proceeded to ship tremendous quantities of pulp to themselves ex-docks and lake ports in the U.S. This foreign pulp flooded the country to such an extent that an embargo was placed upon intercoastal shipments affecting delivers and warehousing in nearly every port from Albany, New York, to Portland, Maine, and down to Norfolk, Virginia. By January 1, 1938, all grades of wood pulp on docks at Gulf and Atlantic Ports reached the unprecedented total of 345,000 tons.

In the latter part of 1937, as a result of these highly artificial conditions, prices reacted violently and such decline continued through 1937 and during the first half of 1938. In anticipating the coming war, foreign sales were made without consideration of cost with the object of getting all possible U.S. exchange. There was a substantial flight of capital particularly from Czecho-Slovakia, Rumania, and Jugo Slavakia where owners of capital were foreseeing the coming war and were endeavoring to get their wealth out of the country and particularly into the United States. Because of restrictions on exchange or security transactions, those interests sought exportable commodities. Wood pulp was one of the few such commodities readily exportable and marketable in the U.S., and such exporters turned to this outlet for transfer of their wealth to the U.S., at any price obtainable. All of this accelerated the decline of the domestic market and caused domestic buyers to

## Exhibit A—(Continued)

cancel or avoid their commitments under domestic contracts, thereby resulting in the interruption of the business of the domestic producers including the taxpayer, which conditions obtained particularly during the latter part of 1938 and the forepart of 1939 and up to the outbreak of the war.

When prices had declined to exceedingly low levels in late 1937 and 1938, European producers resorted to the expedient of "marrying" new contracts at a very low price, to their old, higher prices contracts in order to satisfy customers who were required to accept delivery of the European pulp under their firm commitments. In other words, instead of the seller agreeing to the cancellation of an existing contract either in whole or in part, a further contract would be imposed upon the domestic purchaser for additional tonnage at a substantial reduction in price. For example, if a customer had an old contract for 2000 tons at \$65 per ton, for future delivery, an additional 2000 tons would be contracted for at \$45 per ton, making an average price of \$55 per ton for the entire 4000 tons. This action resulted in interruption of taxpayer's business in two ways: Production was interrupted by these extended sales in the domestic market and abnormally low prices were set thereby since domestic producers, including the taxpayer, had to adjust current quarterly prices to meet the low prices in the new European contracts "married" to old contracts in an effort to avoid further

## Exhibit A—(Continued)

cancellation and hold their customers. In 1939 foreign unbleached sulphite pulp was sold as low as \$33 per ton in the domestic market and domestic pulp as low as \$36 per ton.

Following a meeting in January of 1939, held in Washington with members of the President's cabinet, request was made for enforcement of the Federal Anti-Dumping Act of 1921, and various bills, resolutions and petitions were presented in Congress to the same effect. A showing was made by the U.S. Pulp Producer's Ass'n., that the Anti-Dumping Law was being violated by the importation of foreign pulp to the injury of domestic producers. Investigations were ordered under the Anti-Dumping Act and were under way when the outbreak of the world war so changed conditions that the Government saw fit to discontinue them. Previously, however, action had been taken by this country against Germany and certain Canadian producers in the form of an embargo and otherwise. The outbreak of the world war in September 1939 brought these abnormal conditions to a sudden end. European producers resorted to the war clause of their contracts for protection against increased freight rates, marine insurance, etc., thereby materially increasing the prices in their contracts and the shortage of cargo space soon resulted in practically a complete stoppage of European imports. Production in the plant of the taxpayer, which immediately prior thereto had been running at only



## Exhibit A—(Continued)

about 55% of capacity, was fully resumed in September of 1939 and has continued at capacity since that time. The effect of the foregoing conditions upon the quantity of production and amount realized from sale of the company's product, and specific and detailed information of the extent and effect of foreign imports may be found in various statistical reports and will be supplied by the taxpayer upon request.

(b) If claim of depression is based on membership in depressed industry, describe industry, and furnish names and addresses of other members of such industry.

Industry of which this Company is a part consists of manufacturers of bleached and unbleached pulp and, although this Company suffered more than others due to its loss of contracts with paper mills in Japan, a comparable member of the industry, insofar as being affected by foreign dumping of pulps, would be——

Soundview Pulp Co., Everett, Washington

4. The business of the taxpayer was commenced or there was a change in the character of the business immediately prior to or during the base period (Sec. 722 (B) (4)) change.

(a) On what date did commencement of business or change in character of business occur?

The Company's production capacity, and changes therein, together with a comparison of actual pro-

Exhibit A—(Continued)

duction and sales for the years 1935 to 1939 inclusive, is summarized as follows:

Unbleached Sulphite Pulp

Year	Tons		Sales
	Capacity	Production	
1935 .....	63,000	54,402	53,387
1936 .....	63,028	63,028	61,716
1937 .....	63,377	63,377	59,480
1938 .....	84,000	47,682	50,437
1939 .....	115,000	94,416	96,485
January 1, 1940 .....	128,136		

(c) Did the business reach, by the end of the base period the earning level it would have reached if the business had been commenced, or if the change in the character of the business had occurred, two years prior to the time the commencement or change occurred?

The Company's production capacity which the Company believes should be recognized in the base period years was not reached until January 1, 1940 as shown in the summary above. Furthermore, operations for the year 1935 are not comparable to those of subsequent years due to the transfer in that year of the Company's main production from Everett to Bellingham and the change in that year from the production of bleached pulp to unbleached pulp.



## Exhibit A—(Continued)

EXHIBIT "A"							August 26, 1937	
PUGET SOUND PULP & TIMBER CO.								
Details of Sales Commitments								
June 1, 1937-1938-1939								
Order & Customers	Total Commitments	Del'd. to 6/1/37	To Be Shipped	Price Per Ton	Gross \$ on Whole Commitment	Gross \$ to Be Delivered		
50 Nihon Seishi.....	5,600	1,120	4,480	\$57.81	\$ 323,736.00	\$ 258,988.80		
63 Nihon Seishi.....	1,568		1,568	57.81	90,646.08	90,646.08		
38 Nihon Seishi.....	1,120		1,120	57.81	64,747.20	64,747.20		
62 Nihon Seishi.....	8,400		8,400	57.81	485,604.00	485,604.00		
62 Nihon Seishi.....	8,400		8,400	73.50	617,400.00	617,400.00		
	25,088	1,120	23,968		\$1,582,133.28	\$1,517,386.08		
45 Mitsubishi.....	5,936	4,057	1,879	50.00	296,800.00	93,950.00		
54 Mitsubishi.....	224		224	45.00	10,080.00	10,080.00		
55 Mitsubishi.....	392		392	46.00	18,032.00	18,032.00		
55 Mitsubishi.....	392		392	47.00	18,424.00	18,424.00		
53 Mitsubishi.....	8,400		8,400	50.00	420,000.00	420,000.00		
64 Mitsubishi.....	8,400		8,400	75.00	630,000.00	630,000.00		
67 Mitsubishi.....	8,400		8,400	77.00	646,800.00	646,800.00		
65 Naniwa Seishi.....	1,680		1,680	75.00	126,000.00	126,000.00		
	33,824	4,057	29,767		\$2,166,136.00	\$1,963,286.00		

Exhibit A—(Continued)

Order & Customers	Total Commitments	6/1/37 Del'd. to	To Be Shipped	Price Per Ton	Gross \$ on Whole Commitment	Gross \$ to Be Delivered
41 Tomeogawa.....	1,344	773	571	\$69.15	\$ 92,937.60	\$ 39,484.65
56 Tomeogawa.....	1,120		1,120	69.15	77,448.00	77,448.00
57 Tomeogawa.....	2,520		2,520	69.15	174,258.00	174,258.00
	4,984	773	4,211		\$ 344,643.60	\$ 291,190.65
43 Nihon Shigyo.....	1,176	784	392	70.30	82,672.80	27,557.60
58 Nihon Shigyo.....	1,120		1,120	70.30	78,736.00	78,736.00
59 Nihon Shigyo.....	2,016		2,016	70.30	141,724.80	141,724.80
	4,312	784	3,528		\$ 303,133.60	\$ 248,018.40
49 Taisho Kogyo.....	1,120	291	829	59.00	\$ 66,080.00	48,911.00
61 Taisho Kogyo.....	1,120		1,120	59.00	66,080.00	66,080.00
60 Taisho Kogyo.....	2,240		2,240	75.00	168,000.00	168,000.00
	4,480	291	4,189		\$ 300,160.00	\$ 282,991.00
Total—Japan.....	72,688	7,025	65,663		\$4,696,206.48	\$4,302,872.13
China—1937.....	4,569		4,569	Av. \$48.03	\$ 219,460.30	\$ 219,460.30
China—1938—5826.....	2,688		2,688	75.00	201,600.00	201,600.00
Total—China.....	7,257		7,257		\$ 421,060.30	\$ 421,060.30
Grand Total.....	79,945	7,025	72,920		\$5,117,266.78	\$4,723,932.43

## Exhibit A—(Continued)

## PUGET SOUND PULP AND TIMBER CO.

## Summary of Information With Respect to Application of Section 722

	1936	1937	1938	1939
Plant capacity January 1, 1940—tons.....	128,136	128,136	128,136	128,136
Actual tons sold during year.....	61,716	59,480	50,437	96,485
Additional tonnage which could have been sold under normal conditions based on 1940 capacity.....	66,420	68,656	77,699	31,651
Profit per ton realized.....	\$ (1) 2.28	\$ (2) 8.53	\$ (3) 6.74	\$ (5) 3.58
Profit per ton which would have been realized under normal conditions .....	(1) 2.28	(2) 8.53	(4) 25.11	(6) 11.84

(1)—Based on average selling price of \$36.96 per ton (average selling price per ton in 1936 based on Atlantic Seaboard prices was \$41.25)

(2)—Based on average selling price of \$45.71 per ton (average selling price per ton in 1937 based on Atlantic Seaboard prices was \$50.63)

(3)—Based on average selling price of \$42.46 per ton (average selling price per ton in 1938 based on Atlantic Seaboard prices was \$46.42)

(4)—See item (3). A profit of \$25.11 would have been realized had actual contracts with Japanese concerns been consummated, such contracts having been negotiated at an average of \$65.53 per ton F.O.B. west coast. From published statistics there were exported to Japan in 1938 approximately 1035 tons of pulp at \$64.75 per ton.

Exhibit A—(Continued)

(5)—Based on average selling price of \$38.42 per ton (average selling price per ton in 1939 based on Atlantic Seaboard prices was \$41.00 per ton)

(6)—See item (5). A profit of \$11.84 per ton would have been realized had average selling prices for the years 1935 to 1938 been maintained and had there been no foreign dumping at subsidized prices and low exchange rates.

Increased profit which would have been realized if plant capacity had been that of January 1, 1940 and if there had been no abnormalities in the base period as referred to in notes (4) and (6) above—less income tax thereon.....

\$130,134.66 \$503,410.39 \$2,522,636.17 \$ 960,805.43

Actual base period excess profits net income per form 1121....

20,292.14 408,084.52 8,886.44 200,041.98

Excess profits net income for base period after adjustments authorized under Section 722.....

\$150,426.80 \$911,494.91 \$2,531,522.61 \$1,160,847.41

Excess profits credit:

Total 4 years as above.....

Average .....

Average limited to 95% of income for the year 1939

(95% of \$1,160,847.41) .....

\$4,754,291.73

1,188,572.94

1,102,805.04

## Exhibit A—(Continued)

## PUGET SOUND PULP AND TIMBER CO.

Computation of Excess Profits Tax After Benefit of Section 722  
for Year Ended December 31, 1942

Excess profits net income for 1942..... \$2,537,161.70

Less:

Specific exemption .....\$ 5,000.00

Excess profits credit as computed  
on preceding schedule under

Section 722 ..... 1,102,805.04 1,107,805.04

Adjusted excess profits net income..... \$1,429,356.66

Excess profits tax—90% of \$1,429,356.66..... 1,286,420.99

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Mr. Winter: What counsel had in mind—and we do not urge otherwise—counsel wanted to eliminate any inference that the plaintiff in this action was filing a non-meritorious claim for deferment under 722; and I think the record shows they are still trying to prosecute it. They thought it must have had some merit, and it was not merely for the purpose of delaying payment of interest. I don't think the question is material. It is our position, as I tried to explain to the Court, that \$135,000 is assessed as a deficiency and that the Act and Regulations and legislative history show that interest on a deficiency accrues from the due date although the payment at that time may be deferred. That is the sole issue in the case. That is what the legislative intent and legislative action amounted to. In other words, the taxpayer owed one million five hundred thousand dollars as of March 15, 1944. Under the

Act if he had a claim under 722, he could defer a certain percentage until that claim was acted upon.

The Court: Will counsel expect in their brief to refer to what effect if any the pending petition before the Tax Court will have? [17]

Mr. Winter: No.

The Court: —in this proceeding?

Mr. Winter: No, that has no effect here whatsoever.

The Court: Will both sides agree to that?

Mr. Winter: Your Honor has merely got to decide whether the law requires a taxpayer to pay interest on a deficiency or on the amount which is deferred from the time the Commissioner rules upon the claim. Do I make myself clear?

The Court: All right. I asked the question whether it did.

Mr. Winter: No, your Honor.

The Court: It was put in evidence that there was such an application pending, and I, of course, had to take note of the fact that it was put in evidence. Now I am told by counsel that while in evidence I may ignore it.

Mr. Winter: I don't think it has any bearing. I think it is immaterial so far as your Honor's decision is concerned. I haven't read counsel's brief on the matter, but it is our position that interest is collectable on that deficiency even though the payment was deferred, and then when the claim is acted upon it then becomes a deficiency as of the



date it was due, March, 1943 and not September, 1944, when the [18] claim was acted upon. We don't collect interest,—I mean the taxpayer does not collect interest on his claim when we overassess under 722, but we claim interest—may I must read from the legislative history?

The Court: You may.

Mr. Coster: May I interrupt?

The Court: Surely.

Mr. Coster: Since I introduced the testimony I can very well conceive some taxpayer thought they could use some money by filing a claim that had no merit, and by filing such a claim for deferment of payment of the tax,—that in such a case a taxpayer ought to pay interest for the time he deferred the payment. In this particular case I introduced the testimony merely that we thought we had a bona fide claim and still do and it was not merely a facetious type of claim to bring about deferment of the tax. That was the only purpose of the testimony.

Mr. Winter: We have made no contention here that it was not. Here is what the report says,—the report said—this was the report when they were extending time to file claims under 722 of the Internal Revenue Code and making special provisions with respect to interest on overpayments and deficiencies attributable to final determination under that section. [19]

“The committee amendment of section 1 is designed to make appropriate provision for applica-



tion of the section where there has been deferment of part of the excess-profits tax under section 710 (a)(5) of the code. In general, a taxpayer must pay its tax, computed without any benefit, from the application of section 722. Since, under the bill, taxpayers which have paid their taxes in full, without the application of section 722, will receive any refunds with interest only for the periods provided, taxpayers who have availed themselves of the deferment provided by section 710(a)(5) should be required to pay interest on the amount by which they have underpaid."

It is our position that they could file a claim, and they deferred payment of the \$135,000, and they should have paid the \$135,000 because the claim was found without merit by the Commissioner.

The Court: I am assuming you are going to make reference to this in your brief.

Mr. Winter: Yes, but I was trying to show our position as to the legal question involved.

The Court: In other words, this is a preview of what your brief will be.

Mr. Winter: I have asked the Attorney General to write it. I haven't got time. That is the reason I want [20] a short time; maybe I can get them busy.

The Court: This is a synopsis of a forecast of what you hope the Attorney General will say.

Mr. Winter: There are no cases on the subject. It is a case of first impression.

The Court: Counsel have told me that the matter

is a matter of first impression. That is, counsel have let me know that I will have no help from any other court. In addition, counsel is stating that it was a matter of first impression have said that the question was very technical. I think I will ask the plaintiff to have the reporter run off a transcript of what has occurred this afternoon. By the time these briefs are in it is unlikely that I will remember just exactly what has taken place today, and I will charge the plaintiff with that responsibility.

Mr. Coster: I think Mr. Evans already ordered a transcript.

The Court: You expected what I have requested. There is one thing more I might say to counsel. While in the first instance I am very agreeable to the presentation of this matter by a written brief, it might be that after the briefs are in that I would feel that I would profit by some oral presentation. An oral presentation now might not be helpful, but after I [21] have read the briefs such could be of great assistance. Would it be proper for me to call on counsel for oral argument if I find I have need of it.

Mr. Coster: It would be a pleasure, your Honor.

The Court: I don't wish to ask an unreasonable favor of counsel.

Mr. Winter: Mr. Coster is in San Francisco, but his associate legal counsel are here.

The Court: They might meet with Mr. Winter in the oral presentation later. I might like that.

Mr. Coster: We will be glad to do that.

The Court: All right, gentlemen. Good night.

### CERTIFICATE

I, James R. Royse, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ JAMES R. ROYSE,  
Official Court Reporter.

[Endorsed]: Filed Nov. 20, 1948.

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[Title of District Court and Cause.]

March 31, 1949, 9:30 o'Clock A.M.

Black, J.

### COURT'S ORAL DECISION

The Court: In Puget Sound Pulp & Timber Company, plaintiff, vs. Clark Squire as United States Collector of Internal Revenue for the State of Washington, defendant, the plaintiff brought this action against the defendant for the recovery of approximately twelve thousand dollars representing interest assessed and collected on the deficiency of excess profit taxes for the taxable year 1942. The brief of the defendant concisely states

the question presented as follows: "Was taxpayer required to pay interest on 1942 excess profit taxes deferred under Section 710(a)(5) of the Internal Revenue Code during the pendency of its application for relief under Section 722 of the Internal Revenue Code?"

The defendant's brief states further: "The facts are not in dispute. They are substantially as follows:

"On March 15, 1943 taxpayer filed its income and excess profits tax return for the calendar year 1942. The return disclosed that taxpayer was permitted, under Section 710(a)(5) of the Internal Revenue Code, a deferment of \$135,203.36 in excess profits taxes. Taxpayer filed an application for relief under Section 722 of the Internal Revenue Code, which was denied on November 30, 1944 (August 29, 1940) and the above excess profits taxes were assessed (on September 30, 1944) with interest in the amount of \$11,880.12. The tax and interest were paid (November 29, 1944). This suit is for the recovery of only the interest paid on the deferred payment of excess profits taxes from March 15, 1943 to November 29, 1944."

As stated by defendant's brief and likewise by plaintiff's brief, there is no dispute between the parties with regard to the facts involved in this action. All of the facts material to the determination of the issue of law involved were alleged in the complaint and were admitted by the answer or brief or proved at the trial as true.

This action is brought pursuant to Section 24 of the Judicial Code, U.S.C.A. Title 28, Sec. 41(5) for the recovery of interest.

Plaintiff is a corporation with its principle place of business at Bellingham, Washington.

The defendant's notice and demand upon plaintiff for payment of said \$135,203.36 and the interest thereon were dated September 30, 1944. The plaintiff complied with the requirements for the bringing of this action.

The excess profits tax was imposed at the rate of ninety per cent upon all net income in excess of the credit allowed by law. Congress realized that such a tax would be discriminatory against certain corporate taxpayers which had inadequate credit. For the purpose of avoiding or at least mitigating such discrimination Congress made provision for a constructive credit for those corporations which came within the provisions of Section 722 of the Internal Revenue Code. Since the relief under Section 722 was available only after payment of the tax and upon application for refund, it was considered that in order to make the relief of practical benefit a provision should be made for the deferment of a portion of the excess profits tax under certain circumstances when more than fifty per cent of the corporation's income was subject to excess profits tax. In such connection such Section 710(a) (b) of the Internal Revenue Code was enacted. Such section gave to the corporation within its



terms the right of deferring an amount equal to thirty-three per cent of the reduction claimed.

Plaintiff in connection with the 1942 tax was within the provisions of Section 710(a)(5) and elected to reduce the amount of excess profits tax otherwise payable by it by thirty-three per cent.

The evidence establishes without contradiction, and the Court finds as a matter of fact that the plaintiff's claim for relief under Section 722 was a bona fide claim and was made in good faith. Plaintiff believed and under the evidence had the right in all honesty to believe that plaintiff was entitled to the relief it claimed.

I am not finding nor do I intend to find that the Commissioner was in error on August 29, 1944 when he denied such relief. I have no authority to pass upon that. It is not before me. The question before me is whether or not when the Commissioner of Internal Revenue on August 29, 1944 rejected plaintiff's claim for relief under Section 722 and on September 30, 1944 made demand upon plaintiff for payment of the \$135,203.36, plus interest at six per cent from March 15, 1943, he was mistaken or correct as to the time he fixed for the commencement of the interest liability.

The defendant insists that under the clear reading of the statute, that under the clear statement of the intention of the statute applicable as found in the report of the senate committee, under the ruling of the Commissioner and the administrative practice, and under logic, common sense, consist-

ency and fairness, that the Commissioner was right. In other words, the defendant insists that interest beginning at any later date than March 15, 1943 would have been contrary to law, to common sense, and contrary to fairness with respect to other taxpayers.

Plaintiff on the contrary as urgently contends that the law is clear to the effect that no interest was chargeable before September 30, 1944, that the congressional history of the passage of the Act does not support defendant's position, that the defendant's position is inconsistent with other provisions of the law and other holdings of the Commissioner, and moreover is neither fair nor equitable.

Section 722 of the Internal Revenue Act at the time plaintiff was compelled to pay the interest involved here appeared as Section 722, Title 26, USCA. At the same time Section 710(a)(5) of the Internal Revenue Act was 710(a)(5), Title 26, USCA.

In Section 710(a)(5) we find the following sentence, "For the purpose of Section 271, if the tax payable is the tax so reduced, the tax so reduced shall be considered the amount shown on the return."

In such Section 710(a)(5) there is the further provision as to the deferred amount that if any portion thereof "is in excess of the reduction in tax finally determined under Section 722, such excess may be assessed at any time before the expiration of one year after such final determination."



In neither Section 722 nor Section 710(a)(5) is there any provision as to interest payment. Both parties agree that Section 292 of Title 26, U.S.C.A. as amended by the Act of December 17, 1943, is vital in determining when the interest legally commences. Subdivision (a) states the general rule that "Interest \* \* \* shall be collected \* \* \* from the date prescribed for the payment of the tax." Subdivision (b) reads:

"(b) Deficiency Resulting From Relief Under Section 722.—If any part of a deficiency for a taxable year beginning January 1, 1942 is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under Section 722 for any taxable year, no interest shall be assessed or paid with respect to such part of the deficiency. If any part of a deficiency for a taxable year beginning After December 31, 1941 is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under Section 722 for any taxable year (excluding any portion of a deficiency of excess profits taxes constituting a deficiency by reason of deferment of tax under Section 710(a)(5), and excluding, in case the taxpayer has availed itself of the benefits of Section 710(a)(5), such portion of a deficiency under Chapter 1 as may be determined by the Commissioner to exceed any refund or credit of excess profits tax arising from the operation of Section 722), no interest shall be assessed or paid with respect to

such part of the deficiency for any period prior to one year after the filing of such application, or September 16, 1945, whichever is the later."

Subdivision (b) therefore consists of two sentences.

Every taxpayer is presumed to know what the law is and is presumed to know what the law means. I confess that the first sentence might easily puzzle not only the layman taxpayer but the ordinary attorney. The second sentence, which is the long one, is the sentence which defendant contends clearly establishes in unmistakable language the correctness of defendant's position. If the first sentence is not too clear, what must be said as to the second? Split infinitives are abhorred by the scholastic grammarian. The second sentence offends not only the grammarian but either the ear or the eye of any untechnical individual not an expert in tax phraseology because the second sentence is a split sentence. Its meaning can only be approximated by excluding that portion that was injected into it by way of amendment. By excluding that portion beginning "(excluding \* \* \*)" and ending "\* \* \* 722)" we find that the meaning of the second sentence is substantially akin to the meaning of the first sentence except as to the time when interest shall accrue. The first sentence says that as to a deficiency beginning prior to January 1, 1942 no interest shall be assessed or paid. The second sentence as to such a deficiency in effect says that no interest shall be assessed or paid with re-

spect to such deficiency at least prior to September 16, 1945. Now, if the part which was injected to that long second sentence by amendment had not been interpolated into it, this plaintiff would not have been compelled to pay interest on the deficiency for any period beginning prior to September 16, 1945. Payment could have commenced later than that. It is the position of the defendant that the portion injected into that long sentence by splitting it clearly established that the interest was to begin on March 15, 1943. But the part put in by amendment in no way says such. It merely says that a deficiency portion of a deferment under Section 710(a)(5) shall not be freed of interest until a date as late as September 16, 1945. It says no more.

Defendant in this case on page 3 of its brief concedes that if the statutory provisions as to the interest payment are clear there is no necessity to examine legislative history. Defendant's position is that the statute is clear and that therefore there is no reason to examine legislative history. The defendant, however, does examine legislative history because it says that while the statute is clear to defendant and everyone else, the plaintiff in effect pretends it is not clear to plaintiff. Therefore, the defendant refers to the statutory history so that the plaintiff as well as everyone else will be convinced, and the defendant says the statutory history is clear.

And in such connection the defendant points out

what the report of the Senate Committee says and then adds these words “(meaning, of course, from the date of deferment).” If the report of the Senate Committee had employed those words, then, of course, the Senate Committee’s report would have been as clear as defendant claims it is. But since the defendant felt compelled to inject those words, to-wit, “meaning, of course, from the date of deferment,” it seems to me that defendant must have grave doubt of the clearness of the legislative history.

In the Senate Committee’s report we find this language as to the amendment:

“Since under the bill taxpayers who have to pay their taxes in full without the application of Section 722 will receive any refunds with interest only for the periods provided, taxpayers who have availed themselves of the deferment provided by Section 710(a)(5) should be required to pay interest on the amount for which they have unpaid.”

This statement was in justification of injection by amendment of the language in the middle of the second sentence of subdivision 5, Section 292. The Senate Committee report contains extracts from the report of the Committee on Ways and Means of the House of Representatives in connection with this bill, which report was upon the bill before the proposed amendment by splitting the second sentence as above. In that bill the House Committee says:

“The bill provides that no interest shall be

allowed on overpayments attributable to determinations under Section 722 with respect to taxable years beginning in 1940 and 1941. Correspondingly, no interest will be collected on deficiencies resulting from such determinations for those years.”

That provision of the House Committee’s report expresses the fairness and equity of not compelling the taxpayer to pay interest if the Government does not pay interest on refunds. That particular provision of the bill was accepted by the Senate and made law. It seemed to recognize the equity, consistency and fairness of such a provision as to tax for 1940 and 1941.

The House Committee’s report, found in the Senate Committee’s report, further says:

“With respect to 1942 and subsequent years, interest on overpayments and deficiencies arising from the application of this section is now allowed for any period prior to September 16, 1945 or prior to one year after the filing of the application, whichever is the later.”

Therefore, if the law had been left as the House Committee recommended it, the defendant not only would not have been able to have collected interest from March 15, 1943, but would not have been able to have collected interest from the plaintiff until a period beginning September 16, 1945. But if the provision of the law as it is is clear, equitable and consistent as to 1940 and 1941, it is difficult for me to comprehend how it would be unfair not to begin



interest on the 1942 taxes as of March 15, 1943. The Senate Committee report does not say that the interest is to be chargeable from March 15, 1943. It merely says that by the amendment interest will be chargeable on the deficiency. Since it says no more, clearly, that interest will begin when it should begin according to law.

Plaintiff says that according to the clear statement of the law the interest does not begin until it is payable. The Senate Committee report does not disagree with that contention. The House Committee report in no wise disagrees with that contention. I am satisfied that the law is as plaintiff contends, that interest was not chargeable until the deferred deficiency became payable. Under the law the deferred deficiency became payable in September 1944, when the Commissioner demanded payment.

I have not overlooked the decisions cited by defendant. I have been particularly intrigued by defendant's insisting that logic, common sense and equity supported its position and then citing *Brandtjen and Kluge vs. United States*, 78 Fed. Supplement 509. In that decision it appears that the Collector collected a certain amount from the taxpayer and also certain interest. Thereafter it was found that the Collector should refund the tax collected. The Collector refused to refund the interest. The taxpayer contended that if the tax should be refunded, the interest should be refunded. The taxpayer sued. The defendant thereafter did



not rely on logic, common sense or equity. The defendant there said that Congress had not said that interest was to be refunded and that therefore the Collector would not refund the interest. The defendant in effect there said that if Congress had wanted the interest refunded, Congress could easily have said it. The defendant convinced the Court that the Court had no right to consider logic, common sense or equity, and in closing the Court says this:

“Plaintiff’s argument is appealing, forceful and persuasive of the lack of logic in the Bureau’s refusal to return the interest when the tax is refunded. However, the law often borders on the illogical where the particular ‘statute does not descend to minutiae’ and specifically state that ‘an over-assessment of any tax’ includes interest. If it were intended to include interest, Congress could have so provided. The Court cannot supply the lacking legislation in this respect.”

Paraphrasing a portion of the closing words of that opinion I may say that if Congress had intended that deferment intended to be an aid to the taxpayer was to bear interest not from the time the deferment became payable but from the time the tax would have been payable if there had been no deferment, Congress could have so provided. This Court cannot supply that lacking legislation.

The contention of the plaintiff is easily followed, that the statute provides that the interest starts when the amount becomes payable. The amount

became payable on September 30, 1944. My decision must be to that effect. So construing the clear language of the statute, the legislative history is likewise consistent and logical. Under the Act as originally proposed this deferment would not have drawn interest as shown by the House report, until at least September 16, 1945. The Senate thought there should be interest payable. Consistent with the statute, the Senate Committee undoubtedly thought interest should be payable from the time the deferred amount became payable. That construction makes the legislative history consistent and logical and in accordance with common sense.

I may say that the defendant has pointed out more than one instance of discrimination between taxpayers as to interest allowable by the statute and allowable by the interpretation of the Commissioner as to another extension. One of those discriminations allowable under language found in the Act is awfully close to the language which the defendant contends necessarily means something it does not say in order to avoid the discrimination which is allowed by nearby language. Under this interpretation the defendant is allowed to pay interest from September 30, 1944 to November 30, 1944. If it were not for the amendment, it would not have been necessary for the defendant to pay that interest.

Neither the Act nor the legislative history calls for interest for any period before the deferred amount became payable. I recognize that the Com-

missioner's ruling and practice are not in accord with what I have said but the Commissioner's ruling and practice, while ordinarily presumptively correct and while always persuasive, are neither correct nor persuasive when the clear statute provides differently. I confess that the second sentence of subdivision B of Section 292, Title 26 USCA, on superficial reading makes the contention of the defendant seem plausible. But that second sentence can mean nothing except as it is split apart and analyzed. It is regrettable that Congress did not leave the sentence as it was and add a second sentence so that a superficial reading would not mislead or at least confuse.

Plaintiff is entitled to judgment for the interest paid for the period prior to September 30, 1944.

Findings may be presented.

[Endorsed]: Filed Apr. 15, 1949.

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND  
DISBURSEMENTS

Disbursements

Amount Claimed:

Clerk's fees—\$15.00.

Marshal's fees—\$2.60.

Attorney's fees—\$20.00.

Taxed—\$37.60.

Taxed June 23, 1949.

MILLARD P. THOMAS,

By /s/ TRUMAN EGGER,

Chief Deputy Clerk.

United States of America,

Western District of Washington—ss:

Robert H. Evans being duly sworn, deposes and says: That he is the attorney for the plaintiff in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

/s/ ROBERT H. EVANS.

Subscribed and sworn to before me, this 22nd day of June, 1949.

[Seal]      /s/ TRUMAN EGGER,  
Chief Deputy Clerk U.S. Dis-  
trict Court, Western Dis-  
trict of Washington.

To Thomas R. Winter, Special Assistant to the  
Chief Counsel, Bureau of Internal Revenue, At-  
torney for Defendant:

You will please take notice that on Wednesday,  
the 22nd day of June, 1949, at the hour of 9:30  
o'clock a.m., application will be made to the Clerk  
of said Court, to have the within memorandum of  
costs and disbursements taxed pursuant to the rule  
of said Court, in such case made and provided.

.....,  
Attorney for Plaintiff.

Due service of the within and foregoing Memo-  
randum of Costs and Disbursements and notice of  
the taxation thereof by the receipt of a true copy  
thereof, hereby is admitted in behalf of all parties  
entitled to such service by the Rules of Court, this  
22nd day of June, 1949.

/s/ THOMAS R. WINTER.

[Illegible]

/s/ THOMAS R. WINTER.

[Endorsed]: Filed June 23, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Upon the basis of the pleadings, the evidence submitted at the trial of this proceeding, the briefs and argument of counsel, the Court renders the following:

Findings of Fact

1. Plaintiff sues to recover \$11,880.12 alleging same represents interest paid by plaintiff to the defendant as Collector of Internal Revenue on an excess profit tax deficiency for the calendar year 1942 in the sum of \$135,203.36.

2. The said tax deficiency represented an amount of excess profits tax, payment of which the plaintiff had deferred as authorized by the provisions of Section 710 (a) (5) of the Internal Revenue Code.

3. That of said sum of \$11,880.12 the sum of \$11,640.98 represents interest paid by plaintiff to defendant on November 30, 1944, computed on said tax deficiency of \$135,203.36 at the rate of 6% per annum from March 15, 1943, to August 29, 1944.

4. This action arises under the Internal Revenue Laws of the United States and is brought pursuant to Section 24 of the Judicial Code, U.S.C. Title 28, Section 41(5) for the recovery of interest assessed against and collected from plaintiff.



5. Plaintiff is a corporation with its principal place of business in the City of Bellingham, State of Washington, and the Western District of Washington.

6. Defendant is, and was at all times material hereto, the Collector of Internal Revenue in the State of Washington, is a resident of the Western District of Washington and is the person to whom the interest sought to be collected was paid.

7. Plaintiff duly filed its excess profits tax return for the year 1942 with defendant, as Collector of Internal Revenue. Said return disclosed excess profits net income computed without reference to Section 722 of the Internal Revenue Code in the amount of \$1,884,586.83. Plaintiff's normal tax net income for the year 1942, computed without the credit provided in Section 26(e) of the Internal Revenue Code was \$2,533,133.02. On its excess profits tax return for 1942, plaintiff claimed the benefits of Section 722 of the Internal Revenue Code and claimed a reduction in excess profits taxes in the amount of \$409,707.16. Plaintiff's claim for the benefits of Section 722 was a bona fide claim and was made in good faith.

8. Plaintiff elected to reduce the amount of excess profits tax computed without the benefit of Section 722 of the Internal Revenue Code by the amount of \$135,203.36.

9. Plaintiff was entitled to a credit against its

excess profits tax for 1942 in the amount of \$150,000 for debt retirement and elected to take said credit in its return. After the deduction of said \$135,203.36 pursuant to the provisions of Section 710 (a)(5) of the Internal Revenue Code, and the debt retirement credit of \$150,000, plaintiff's remaining excess profits tax was \$1,410,924.79.

10. Said tax in the amount of \$1,410,924.79 was duly paid to defendant at the times and in the manner provided by law.

11. Plaintiff's profits for the year 1942 were renegotiated and as the result thereof, plaintiff's excess profits tax was reduced by the amount of \$119,492.48.

12. On August 29, 1944, the Commissioner of Internal Revenue determined that plaintiff was not entitled to relief under Section 722 of the Internal Revenue Code, rejected plaintiff's claim for relief under said Section 722 and assessed against plaintiff for the year 1942 additional excess profits taxes in the amount of \$179,199.48 which included the aforesaid \$135,203.36, payment of which had been deferred as aforesaid.

13. On October 14, 1944, plaintiff paid to the defendant the said additional taxes and all interest thereon excepting the interest in the sum of \$11,640.98, which was paid later as aforesaid.

14. Defendant's notice and demand upon plaintiff for payment of said \$135,203.36 and the interest thereon was dated September 30, 1944.

15. Plaintiff filed its claim for refund of interest paid on said \$135,203.36 in the amount of \$11,880.12 on or about November 30, 1944, and said claim was rejected by the Commissioner on or about March 21, 1945. Thereafter, this suit was duly filed.

16. No part of the said sum of \$11,640.98 sought to be recovered by plaintiff from the defendant has been refunded or credited to plaintiff.

### Conclusions of Law

1. Interest does not start to run on an excess profits tax properly deferred under Section 710 (a)(5) of the Internal Revenue Code until the date prescribed for the payment of that tax. (Internal Revenue Code, Sections 729 and 292.)

2. March 15, 1943, is the date prescribed for payment of the excess profits tax for the calendar year 1942, (I.R.C. Sections 729 and 56) but where the taxpayer claims the benefit of Section 722 of the Internal Revenue Code and defers the payment of a portion of the excess profits tax under authority of Section 710 (a)(5) of the Internal Revenue Code, as in this case, the amount of the tax payable on March 15, 1943, is the excess profits tax reduced by the amount of the deferred tax. (I.R.C. Section 710 (a)(5).)

3. This deferred tax becomes payable only after the Commissioner of Internal Revenue rejects the claim for benefits under Section 722 and assesses the tax, and the date prescribed for its payment is

the date of the notice and demand from the Collector of Internal Revenue (I.R.C. Section 710 (a) (5), 271 and 272.)

4. The plaintiff became liable for the deferred tax of \$135,203.36 when the Commissioner of Internal Revenue rejected the plaintiff's claim for refund under Section 722 of the Internal Revenue Code on August 29, 1944, and assessed the said tax as a deficiency (I.R.C. Sections 710 (a) (5), 271 and 272); and the only date prescribed for the payment of that particular tax deficiency is the date of the notice and demand from the defendant as Collector of Internal Revenue which was September 30, 1944. (I.R.C. Sections 272 (b) and (c).)

5. Interest is collectible on said deferred tax only from the date prescribed for payment of said tax, i.e., September 30, 1944, to the date of payment (I.R.C. Section 292, 294 (b).) Since the plaintiff paid the said tax upon notice and demand from the defendant as Collector of Internal Revenue, it was not liable for any interest on said deferred tax, and the defendant wrongfully demanded and collected interest from plaintiff on said tax for the period March 15, 1943, to September 30, 1944. Since plaintiff is seeking to recover interest charged and paid on said deferred tax up to August 29, 1944, the plaintiff is entitled to recover the said sum of \$11,640.98.

The foregoing findings of fact and conclusions of law are ordered to be filed and made a part of

the record herein, and the Clerk of this Court is directed to enter judgment accordingly.

Signed at Seattle, Washington, this 11th day of July, 1949.

/s/ LLOYD L. BLACK,  
U. S. District Judge.

O.K. as to Form & Figures.

/s/ THOMAS R. WINTER.  
Presented for Signature & Entry.

By /s/ ROBERT H. EVANS,  
Atty. for Plaintiff.

[Endorsed]: Filed June 23, 1949.

In the District Court of the United States in and  
for the Western District of Washington

No. 2077

PUGET SOUND PULP & TIMBER CO.,  
Plaintiff,

vs.

CLARK SQUIRE, United States Collector of In-  
ternal Revenue for the State of Washington,  
Defendant.

### JUDGMENT

The cause having come on regularly for trial on October 20, 1948, before the Court, sitting without a jury, George H. Koster, Esq., and Robert H. Evans, Esq., appearing as attorneys for Plaintiff, and Thomas R. Winter, Special Assistant to the General Counsel for the Bureau of Internal Revenue, appearing as attorney for Defendant, and the cause having been submitted to the Court for consideration and decision, and the Court after due deliberation having filed its findings of fact and conclusions of law and ordered that judgment be entered herein in favor of the plaintiff for overpayment of interest collected on an excess profits tax deficiency for the year 1942;

Now, Therefore, by virtue of the law and by reason of the findings and conclusions aforesaid,

It Is So Ordered, Adjudged and Decreed, that plaintiff do have and recover against the defendant



the sum of \$11,640.98, with interest thereon to be computed as provided by law at the rate of 6% per annum from November 30, 1944, to a date preceding the date of refund thereof by not more than thirty days; and plaintiff is entitled to costs and disbursements in this action expended in the amount of \$37.60.

The Court hereby certifies that there was probable and reasonable cause for the act of the defendant, the Collector of Internal Revenue, in demanding and collecting from the plaintiff the interest on the tax deficiency, for the refund of which interest this judgment is entered.

Dated at Seattle, Washington, this 11th day of July, 1949.

/s/ LLOYD L. BLACK,  
Judge of the United States  
District Court.

OK as to Form & Figures.

/s/ THOMAS R. WINTER,  
Presented for signature & entry.

By /s/ ROBERT H. EVANS,  
Atty. for Plaintiff.

[Endorsed]: Lodged June 23, 1949.

[Endorsed]: Filed and entered July 11, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Puget Sound Pulp and Timber Co., Plaintiff  
Named Above, Evans, McLaren, Lane, Powell  
& Beeks, and Robert H. Evans, Attorneys for  
Plaintiff:

You, and Each of You, will please take notice  
that the defendant, Clark Squire, United States  
Collector of Internal Revenue for the State of  
Washington, appeals to the United States Circuit  
Court of Appeals for the Ninth Circuit from the  
Judgment entered in this action on July 11, 1949.

/s/ J. CHARLES DENNIS,  
United States Attorney.

/s/ CHARLES R. WINTER,  
Assistant to the Chief Counsel, Bureau of Internal  
Revenue.

[Endorsed]: Filed Aug. 19, 1949.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF  
RECORD ON APPEAL

To: The Clerk of the Above-Entitled Court:

Defendant Clark Squire, United States Collector of Internal Revenue for the District of Washington, by and through his attorneys of record, J. Charles Dennis, United States Attorney for the Western District of Washington, and Thomas R. Winter, Special Assistant to the Chief Counsel, Bureau of Internal Revenue, pursuant to Rule 75(a) of Rules of Civil Procedure, as amended, hereby designates the entire record in this case to be contained in the record on appeal.

/s/ J. CHARLES DENNIS,  
United States Attorney.

/s/ THOMAS R. WINTER,  
Special Assistant to the Chief Counsel, Bureau of  
Internal Revenue.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 19, 1949.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the undersigned, respective counsel for plaintiff and defendant in the above-entitled cause, that all of the original exhibits admitted in evidence at the trial of this cause, to wit: plaintiff's Exhibits 1 and 2, and defendant's Exhibit A and schedules attached, may be transmitted with the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ GEORGE H. KOSTER,

/s/ GEORGE V. POWELL,

Of Counsel for the Plaintiff.

/s/ J. CHARLES DENNIS,

United States Attorney.

/s/ THOMAS R. WINTER,

Special Assistant to the Chief Counsel, Bureau of Internal Revenue, of Counsel for the Defendant.

[Endorsed]: Filed Sept. 21, 1949.

[Title of District Court and Cause.]

ORDER

Upon stipulation of counsel and good cause appearing therefor, it is hereby

Ordered that the Clerk of this Court, and he is hereby directed to transmit to the Circuit Court of Appeals for the Ninth Circuit, with the transcript of record on appeal herein, the original exhibits in this cause, to wit: plaintiff's Exhibits 1 and 2, and defendant's Exhibit A and schedules attached.

Done in Open Court this 21st day of September, 1949.

/s/ LLOYD L. BLACK,  
Judge.

Presented by:

/s/ J. CHARLES DENNIS,  
United States Attorney.

[Endorsed]: Filed Sept. 21, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO RECORD ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure as Amended, I am transmitting herewith as the record on appeal in the above-entitled cause, pursuant to designation of counsel, all of the original pleadings on file and of record in said cause in my office at Seattle, as set forth below, and that said pleadings, together with the exhibits admitted in evidence at the trial of said cause, numbered Plaintiff's 1 and 2, and Defendant's A, constitute the record on appeal from the Judgment filed and entered July 11, 1949, in plaintiff's behalf, to the United States Court of Appeals at San Francisco, California, to wit:

1. Complaint.
2. Summons with Marshal's return of service.
3. Stipulation Extending Time to Feb. 15, 1947, to plead.
4. Order Extending Time to February 15, 1947, to plead.



5. Answer.
6. Stipulation Extending time for assignment of cause until called for settling by counsel.
7. Order Striking Cause from Trial Calendar.
8. Order Transferring Cause to Northern Division.
9. Motion to Place Cause on Trial Calendar.
10. Notice of Hearing on above motion.
11. Senate Report No. 508, Extending the Time Within Which Applications Under Section 722 of the Internal Revenue Code Must Be Made.
12. Bulletin on Section 722 of the Internal Revenue Code.
13. Plaintiff's Brief.
14. Brief for the Defendant.
15. Court Reporter's Transcript of Hearings for Perpetuation of Testimony of Lawson P. Turcotte on October 20, 1948.
16. Plaintiff's Reply Brief.
17. Court Reporter's Transcript of Court's Oral Decision of March 31, 1949.
18. Memorandum of Costs and Disbursements.
19. Findings of Fact and Conclusions of Law.
20. Judgment signed and entered July 11, 1949.
21. Notice of Appeal.

22. Designation of Contents of Record on Appeal.

23. Stipulation Transmitting original exhibits as part of Record on Appeal.

24. Order Transmitting Original Exhibits as part of Record on Appeal.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 21st day of September, 1949.

MILLARD P. THOMAS,  
Clerk.

[Seal] By /s/ TRUMAN EGGER,  
Chief Deputy.

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[Endorsed]: No. 12368. United States Court of Appeals for the Ninth Circuit. Clark Squire, United States Collector of Internal Revenue for the State of Washington, Appellant, vs. Puget Sound Pulp & Timber Co., Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed September 26, 1949.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 12368

CLARK SQUIRE, Collector of Internal Revenue,  
Appellant,

vs.

PUGET SOUND PULP & TIMBER COMPANY,  
Appellee.

STATEMENT OF POINT UPON WHICH AP-  
PELLANT INTENDS TO RELY AND DES-  
IGNATION OF THE RECORD TO BE  
PRINTED

The District Court erred in concluding and holding that taxpayer was not liable to the United States for interest on deferred excess profits taxes for the taxable year 1942 from March 15, 1943, the date taxpayer's return was filed, to August 29, 1944, the date the Commissioner of Internal Revenue determined that taxpayer was not entitled to relief under Section 722 of the Internal Revenue Code.

Appellant designates the entire record for printing.

J. CHARLES DENNIS,  
United States Attorney,  
Attorney for Appellant.

[Endorsed]: Filed Oct. 14, 1949.

[Title of Court of Appeals and Cause.]

STIPULATION  
RE DESIGNATION OF PORTIONS OF  
RECORD TO BE PRINTED

It is hereby stipulated by and between the undersigned, of respective counsel for appellant and appellee in the above-entitled cause, that since the record in this cause contains the following items which were filed with the trial court but were not received as exhibits in the case, the same need not be printed and are hereby excepted from the designation of record for printing heretofore filed, to wit:

- (1) The report to accompany H.R. 3363, consisting of five pages;
- (2) Bulletin on Section 722 of the Internal Revenue Code, consisting of 170 pages;
- (3) Plaintiff's brief of 20 pages;
- (4) Respondent's brief of 12 pages;
- (5) Plaintiff's reply brief of nine pages; and
- (6) All correspondence of the Clerk of the District Court.

Dated this 24th day of Oct., 1949.

/s/ J. CHARLES DENNIS,  
United States Attorney.

/s/ THOMAS R. WINTER,  
Special Assistant to the Chief Counsel, Bureau of  
Internal Revenue, of Counsel for Appellant.

/s/ ROBERT H. EVANS,

/s/ GEORGE H. KOSTER,  
Of Counsel for Appellee.

[Endorsed]: Filed Oct. 28, 1949.